

NEW ISSUES IN REFUGEE RESEARCH

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Rights at Risk: A thematic investigation into how states restrict the freedom of movement of refugees on the African Continent.

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Introduction

The right to freedom of movement¹ for refugees has received limited academic attention on both a normative and legal level. This is surprising given its fundamental nature: once this right is granted, it is seen as a 'gateway' right to others contained within the Convention relating to the Status of Refugees (1951) ('the 1951 Convention') such as the right to work and education but also as a gateway to other human rights, for example the right to family life as guaranteed by the International Covenant on Civil and Political Rights (ICCPR).² Thus, Van Hear (2009) sees freedom of movement (and mobility³ more broadly), as beyond mere movement or a means to achieve immediate protection or socio-economic reward, and instead as 'a fundamental capabilities-enhancing freedom itself.'⁴ At the very minimum, this is because movement creates the manifestation of individual agency.

Traditionally, the right to freedom of movement has most severely been restricted for refugees in long-term encampments. In these situations, refugees can find themselves unable to live outside of the camp, while leaving the camp for even a few hours can require specific reasons, such as medical emergencies.⁵ Yet refugee camps⁶ still remain one of the chief responses to refugee movements in the Global South (Kagan, 2013). They are set up to deal with periods of mass influx or exist as permanent structures to house all new refugees on an individual basis. For example, camps were set up in Jordan in 2012 due to thousands of Syrians crossing the border each day,⁷ while in countries like Tanzania and Kenya, even though some camps have existed for over 20 years, all new refugees are expected to go to camps upon arrival (Edwards, 2008).⁸ Over time, the distinction between the two categories often becomes arbitrary. Camps that were initially set up as temporary responses to mass influx often evolve into permanent settlements, where new refugees are also expected to live.

The highest concentration of long-term encampments is on the African continent, which is currently bucking the global trend of refugees moving to urban settings and away from rural areas. While 59 percent of the total global population of refugees are now settled in urban areas (Crawford et al. 2015),⁹ planned and managed camps in rural areas of sub-Saharan Africa¹⁰ are still the most common accommodation for refugees (UNHCR, 2015).¹¹ Whilst there has been a great deal of research into why African states choose to use camp policies to house

¹ Freedom of movement or liberty of movement are defined in the Convention relating to the Status of Refugees (1951) and the International Covenant on Civil and Political Rights (1966) as consisting of two rights: the right to move freely in the territory and the right to choose residence. Unless otherwise stated, when freedom of movement is referred to in this paper, it signifies the granting of both rights.

² Freedom of movement is also enshrined in Article 13(1) of the Universal Declaration of Human Rights: 'Everyone has the right to freedom of movement and residence within the borders of each state.'

³ Mobility can be defined in a multitude of ways. For the purpose of this paper it is seen as more than physical movement. As Sturridge (2011) notes, it is a process that incorporates migration and transnationalism, together with related social, cultural, economic and policies processes (such as livelihoods).

⁴ For a discussion on this, also see Long (2010).

⁵ For example, Somali refugees in the Dadaab refugee camp in Kenya have their movement restricted and are prevented from access to the labour market (Van Hear et al., 2012).

⁶ The term refugee camp in this paper refers to UNHCR's definition of a planned or managed camp (UNHCR, 2011a).

⁷ See UNHCR (2015b). It should be noted that more than 500,000 Syrians are living in Jordan outside of the camps.

⁸ Authorised by the Kenyan Refugee Act 2006 and the Kenya Subsidiary Legislation 2009.

⁹ Whether this trend of refugees moving to urban areas is as a result of a normative shift in how states and the international community receive and treat refugees or more the result of mobility-centred practices by refugees combined with laissez-faire reception approaches (such as states turning a blind eye to refugees rebelling against draconian methods of reception) is open to debate and a subject of the author's current PhD research. Furthermore, whether this is an example of the African region resisting international law and norms to create regional customs is discussed in Chapter 5 and 6.

¹⁰ Currently at 4.4 million, the region also hosts the largest number of refugees in the world (UNHCR, 2015c).

¹¹ In recent years, this appears to be changing, with the percentage of refugees in sub-Saharan Africa housed in camps declining year-on-year since 2012. During the same period, the proportion of individual accommodation has increased (14 to 26 percent between 2012 -2014) (UNCHR, 2015b).

and contain¹² refugee populations, there has been little work on how states achieve these policies of encampment and restrictions on freedom of movement within the confines of their legal international obligations. This is of particular interest, as the majority of states in Africa have signed the 1951 Convention and the ICCPR, which both contain the right to freedom of movement and rigid criteria for restricting it. Through a thematic analysis of national legislation and government and UNHCR policy, it is hoped that studies of this kind will progress research in this area. Specifically, an understanding of how states grant or restrict this right will highlight the effects these restrictions are having on international refugee and human rights law, the international refugee regime¹³ as a whole and most importantly the protection of refugees.¹⁴

As noted above, as well as using the 1951 Convention, human rights instruments will be applied as a framework to see how states respond to refugees' right to freedom of movement. As Beyani (2000, p.110) noted, there has been reluctance in the past by academics and practitioners to acknowledge that refugees and asylum seekers can claim the same human rights as everyone else. Rather, they have maintained a 'false dichotomy between 'refugee-specific' standards and human right standards.' There is now, however, a general acceptance that the 1951 Convention 'and the whole body of refugee law, must be read in the light of general human rights law' (Durieux, 2009).¹⁵

The paper will also look at the involvement, implicit or implied, of UNHCR in restrictions on freedom of movement. UNHCR, like governments, has in the past tended to focus on camp policies over durable solutions, such as local integration (Lindley, 2001). With its mandate to protect refugees and its heavy involvement in camps in Africa, UNHCR is in a unique position to protect the rights of refugees under the 1951 Convention, including the right to freedom of movement. As Hathaway (2005, p.156) notes, the 'enforcement of these rights is to be accomplished by the attribution to UNHCR of a 'surrogate protector role.' The paper will, however, retain a clear focus on the role of state responsibility for the granting of rights set out in international treaties.¹⁶

The paper is divided into six chapters. The first chapter looks at the literature in this area of refugee and international law, focusing on relevant international legal instruments' treatment of a refugee's right to freedom of movement. In addition, this section analyses the major disagreements by academics in relation to the interpretation of relevant articles and also notes major gaps in the literature. The second chapter gives an overview of refugee movement and the reliance on camps in the African context. It also examines the varying roles host states and UNHCR play in the development of these encampment policies. The third chapter builds on the previous two, by setting out the regional developments in relation to the right to freedom of

¹² See Shacknove (1993) for a discussion on the containment of refugees. In this paper containment is used to mean any effort to localise or internalise refugees in host countries or regions of origin (normally in the form of camps). The containment of persons in their country of origin (i.e. in safe havens, camps, safety zones) is beyond the scope of this paper.

¹³ The refugee regime is essentially made up of two elements; the 1951 Convention and the UNHCR, with the most important norms, principles, rules and decision-making procedures relating to the regime found in the 1951 Convention and its 1967 Protocol, and the Statute of UNHCR (Betts, 2009). There are however also regional conventions such as the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention), which will be discussed below.

¹⁴ Some caution should be taken when analysing African state's approaches to the freedom of movement of refugees. Differences in treatment of refugees can be seen between states who maintain similar refugee policies and even between regions in the same country (Schmidt, 2014). There are therefore, clear knowledge gaps at the local level, which need further research.

¹⁵ Note that some commentators view the 1951 Convention itself as a human rights instrument (see Goodwin-Gill and McAdam (2011) for a discussion on this).

¹⁶ There are various areas relating to freedom of movement of refugees, which are beyond the scope of this paper. First, this paper is concerned with situations of non-conflict: therefore, humanitarian law and the use of restrictions on freedom of movement in times of conflict are not discussed in depth. Also, the focus of this paper is on refugees who have been recognised by the state as refugees, and so the use of arbitrary detention of asylum seekers and non-recognised refugees is not covered (See Edwards (2008)). Finally, the evolving concept of the morality and ethics of restricting freedom of movement is not discussed due to time and space constraints (see Juss (2006)).

movement of refugees, looking at the regional conventions and state behaviour more generally. Chapters 4 and 5 outline the methodology and findings of the study, looking at: how states restrict freedom of movement; what state behaviour can show us in relation to relevant international and regional legal instruments; and whether states are breaching international and regional law with their encampment policies. The overall conclusions and possible avenues for future study comprise Chapter 6.

In the past, commentators, academics and international organisations have accepted that restrictions (even potentially extreme ones) on refugees' freedom of movement is an unfortunate but necessary way of balancing the rights of the refugee, the rights of the local population and those of the state (particularly during an initial emergency phase). In what can only be described as a 'dark period' for refugee protection (Crisp, 2016),¹⁷ the current study aims to bring the focus back to the fundamental right and outline how states restrict this right in the severest of settings. It is hoped that by discussing the consequences of these restrictions on the integrity of the international refugee regime and on the refugees who are compelled to abide by them, conclusions can be drawn to help move the debate forwards.

¹⁷ To support this assertion, Crisp highlights the deteriorating treatment of refugee by a number of developed countries. For example, Australia (forced returns and offshore detention), the EU (entering into a contentious agreement that permits refugees to be returned from Greece to Turkey) and Japan (rejecting 99 per cent of asylum applications in 2015).

1 The International Legal Framework

The next chapters set out the key academic work in relation to a refugee's right to freedom of movement within his or her country of asylum. This first chapter focuses on the literature surrounding the international legal framework. The subsequent two chapters focus on the regional legal instruments that relate to the freedom of movement of refugees in Africa but also broaden the discussion to discuss the political, economic and social structures that create and maintain camps in Africa.

This current chapter is divided into two parts: 1.1) 'International Refugee Law' and 1.2) 'International Human Rights Law' which look at the different international legal frameworks that guarantee freedom of movement for refugees but also outline how states are permitted to restrict the right. As will be seen, this area of international law has not been the subject of a great deal of research. Additionally, there seems to be little consensus by academics on how this right as contained within international conventions should be interpreted/implemented or when restrictions are permitted.

1.1 International Refugee Law

Under the 1951 Convention, once refugees enter the territory of a state party to the convention, they benefit immediately from certain rights and further rights then 'accrue as a function of the nature and duration of the attachment to the asylum state' (Hathaway, 2005, p. 155). Hathaway (2005) distinguishes between five different levels of attachment, which confer different degrees of rights on refugees, ranging from the lowest (a refugee being subject to the jurisdiction of the state), all the way up to a small set of rights only reserved for refugees who can show they have established durable residence in the state.¹⁸ As will be discussed below, there are conflicting opinions regarding which level of attachment a refugee has to have with a host state for the right to freedom of movement (as set out in Article 26 of the convention¹⁹) to be applicable.

Article 9, Article 31 and Article 26 of the 1951 Convention refer (directly or indirectly) to the freedom of movement of refugees and the categories of permissible restrictions to this right that states can impose on asylum seekers and refugees (Beyani, 2000). While not specifically referring to freedom of movement, Article 9 does allow states to take provisional measures (which would include restricting the movement of refugees) in times of war or grave and exceptional circumstances. As Beyani (2000) suggests, in times of emergency or national security,²⁰ an investigation can be undertaken to determine whether a specific person is a refugee. The article places an emphasis on 'particular persons,' and therefore, any restriction imposed under Article 9 would need to be applied to specific individuals (UNHCR, 2013).²¹ The word 'pending' in the article notes the provisional nature of the measures and therefore should only last until any investigation of the person is completed (Grahl-Madsen, 1997).²²

Article 31 relates to the unlawful entry of asylum seekers and permits restrictions on freedom of movement, specifically the authority to detain or restrict an asylum seeker to a specific area

¹⁸ In contrast, Goodwin-Gill and McAdam (2011) suggest there are only three levels of attachment (simple presence, lawful presence and lawful residence).

¹⁹ See below.

²⁰ For a detailed discussion on what national security amounts to see Grahl-Madsen (1997, p. 108 onwards).

²¹ Hathaway (2005, p.267) disagrees, suggesting that provisional measures can be taken collectively against all refugees, but would only be acceptable if viewed as 'essential' in response 'to an extremely compelling threat to national security.' Therefore, a mass influx of refugees would not on its own be sufficient to deploy provisional measures under Article 9.

²² While beyond the scope of this paper, there has been considerable debate surrounding Article 9: with experts in disagreement regarding the provisional nature of the measures; whether the article is applicable in individual cases or mass influxes; and whether it only relates to asylum seekers when their cases are being reviewed or in fact it also covers refugees who have been through a status determination process. See Davy (2011), Edwards (2012), Chetail (2014) and Hathaway (2005) for a discussion.

of residence. The purpose of the article, however, is to enable the process of determining the status and identity of the person and therefore, the restrictions on freedom of movement should be temporary and 'conditional upon formal recognition of refugee status, or departure to a foreign country' (Beyani, 2000, p.112). Under Article 31(2), freedom of movement can be suspended or limited when there is a period of mass influx (Hathaway, 2005). In times of mass influx, the suspension of freedom of movement should, however, only last for a period of days to allow for the state to set up emergency provisions for a large intake of refugees and to minimise any disruption to public order (Hathaway, 2005). From a practical and safety standpoint, the insistence on immediate freedom of movement for a large prima facie refugee caseload would appear counterproductive (Jamal, 2000 and Beyani, 2000), nevertheless this limitation should come to an end as soon as a refugee status is 'regularised'²³ (Deardorff, 2009). While the right to freedom of movement under Article 9 and 31 will be discussed further, the main focus of this paper, in relation to refugee law, is the rights enshrined within Article 26.

1.1.1 Article 26

Article 26 relates to the 'general right' to freedom of movement of refugees in a state (Hathaway, 2005, p.414) and as such is the most relevant in relation to the long-term nature of restrictions imposed on refugees in camps. The following sub-section looks at the various aspects of the article and how they have been interpreted in the literature. Opinion is divided on the meaning of the various sections of the article; little research has been conducted in relation to states' interpretation of the right as set out in the 1951 Convention.

1.1.1.1 '...lawfully in its territory...'

The right to freedom of movement under Article 26 of the 1951 Convention takes effect once a refugee is 'lawfully in the territory' of a state party. With other rights under the 1951 Convention also triggered at this level of attachment, such as the right to self-employment (Article 18) and protection from expulsion (Article 32), there has been a great deal of discussion in academic circles as to the meaning of 'lawfully in'. While on the face of it, the meaning seems unclear, the general consensus is that at its very minimum, 'lawfully in' requires more than a refugee simply being present in the country of asylum; rather, he or she needs to establish legal presence (Edwards, 2011a).²⁴ Hathaway (2005, p.414) suggests a refugee is lawfully present 'once formally admitted to the asylum state's refugee verification procedure, or otherwise expressed or implied authorisation to remain at least temporarily in the state's territory.' Robinson (1953) suggests that 'lawfully in' in the context of the 1951 Convention must signify something different to 'lawfully staying'²⁵ and therefore even if a refugee only received a temporary admission, it would be sufficient to trigger the rights under Article 26.²⁶

Grahl-Madsen (1997, p.360) notes that a situation can occur when a person is in a country 'lawfully' under international refugee law but 'illegally' present for another set of purposes, such as the national immigration law. For this reason, many scholars have referred to 'lawful presence' as an 'intermediate category' between illegal presence and a right to stay (Hathaway, 2005, p.183 and Grahl-Madsen, 1997). Due to the very nature and importance of the rights that are covered by this provision (right to freedom of movement, restriction on expulsion), it implies to many an intention on behalf of the drafters of the convention to not interpret the content of these provisions restrictively (Edwards, 2011a). It surely cannot be the case that states can simply 'terminate at will a person's lawful presence in its territory and thus deny him the benefit of the provisions' (Grahl-Madsen, 1997, p. 360).

²³ See FN32 for an explanation of this term. Also see Chapter 2 and 3 below for further discussion on emergency phases in times of mass influx.

²⁴ As opposed to Article 2 and 3 of the 1951 Convention, which are predicated solely on the presence of the refugee in the asylum state. The legality of their presence is irrelevant (Marx, 2011).

²⁵ Specific articles in the 1951 Convention refer to rights that appear to be applicable to refugees who are attached to the state on a level higher than 'lawfully in' the territory. Article 25 (Administrative assistance) refers to 'lawful residence'.

²⁶ Due to varying approaches by states, in practice it is hard to distinguish between 'lawful presence' and 'lawful residence' (Goodwin-Gill and McAdam, 2011).

State practice however, shows that states do distinguish between 'lawfully in the territory' and others who are unauthorised (Edwards, 2011a).²⁷ According to Goodwin-Gill and McAdam (2011, p.525), lawful presence suggests admission in accordance with applicable national immigration law, for a temporary purpose, for example as a student or visitor, in comparison to 'lawful residence or staying,' which suggest more permanent attachment to the state.²⁸ Edwards (2011a) criticises this view, believing it relies too heavily on national immigration laws, which can vary greatly, rather than the essence of the 1951 Convention.²⁹ This view was also supported by the German Federal Administrative Court, which stated that it is not enough to simply apply what national law says about 'lawful presence' (Bundesverwaltungsgericht, 2008).

Marx (2011 p.1156) goes further and suggests a refugee is to be considered lawfully within the territory of a contracting state 'as soon as he or she is present in the territory of the State.' Under this reading of Article 26, all refugees should be granted freedom of movement as soon as they cross a border into a state party to the Convention. A refugee does not become 'refugee' by state recognition but rather because he or she is a refugee (UNHCR, 1979) and so Marx argues that a refugee is lawfully in the territory regardless of whether his or her claim for asylum has been recognised. While the view held by Marx (2011) is appealing for advocates of refugee rights, it appears to dismiss the different levels of attachment with a host state which confer different rights to refugees, as set out by the drafters of the 1951 Convention.³⁰

Hathaway's (2005) approach falls somewhere in the middle of the two previous opinions and would appear to be the most appropriate interpretation of Article 26, particularly in the African setting. Under this reading, the right to freedom of movement takes effect as soon as a refugee does all in his or her power to apply for asylum in the state. This would take into account state practice (i.e. the procedure for applying), allow for security and protection concerns surrounding registration in times of mass influx, remove the potential for state abuse³¹ and fit logically within the five levels of attachment set out in the 1951 Convention. Once a refugee has been 'regularised'³² and is therefore 'lawfully in' the territory, Article 26 would then apply (Hathaway 2005, p.705).

While this approach seems a reasonable interpretation, as Goodwin-Gill and McAdam (2011) note, in practice, states appear to focus more on national legislation i.e. you are lawfully within a state when you have conformed to national law. This study will contribute to these discussions by analysing national legislation and state practice in Africa to see how states that potentially have the severest restrictions on freedom of movement approach these issues.

²⁷ See for example *Saadi v. United Kingdom* (2008) before the ECHR.

²⁸ This is supported by UNHCR (1988, p.4) '...the 'lawfulness' of the stay was to be judged against national rules and regulations governing such a stay.'

²⁹ When read with Article 31(1) of the Vienna Convention on the Law of Treaties, 1969 ('VCLT'), the term 'lawfully' should be given its meaning in the context and in the light of the object and purpose of the 1951 Convention (Marx, 2011).

³⁰ As noted above, examples include Article 2 and 3 of the 1951 Convention, which only require the presence of the refugee in the host state.

³¹ As Hathaway and Foster (2014) highlight, the express duty under the 1951 Convention to grant rights at the first three levels of attachment suggests there was no intention on the part of the drafters to allow states to withhold rights pending successful refugee status assessment. As they note, it would seem perverse if a state could avoid its responsibilities to protect by refusing to assess a claim.

³² According to Hathaway (2005), this would include the filing of an application for refugee status determination by the claimant or completing of the subscribed steps by the claimant so the state can assess the claim for refugee status.

1.1.1.2 “...the right to choose their place and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.”

Turning to the second part of Article 26, the wording can be split into two sub-parts. First, ‘...the right to choose their place and to move freely within its territory...’ suggests that refugees have the right to choose their residence and so, while often overlooked, Article 26 contains two separate rights: (a) a right to choose place of residence and (b) the freedom of movement within the state of asylum (Grahl-Madsen, 1997). Secondly, ‘...subject to any regulations applicable to aliens generally in the same circumstances’ suggests that refugees have the right to move freely in the country of asylum and choose a place of residence subject only to regulations that are applicable to aliens in general, in the same circumstances. As Edwards (2011b) notes, any restrictions imposed on ‘aliens generally’ would have to conform to international law, for example, the ICCPR. Marx (2011) argues that this section of Article 26 makes it clear that a state may not impose regulations *specifically* restricting refugees’ freedom of movement unless there are similar regulations affecting aliens in general.³³ Therefore, applying this to policies of encampment, it suggests that if refugees meet the criteria of Article 26, then states are not permitted under the 1951 Convention to have legislation or policy that *specifically* restricts the movement or choice of residence of ‘regularised’ refugees.³⁴

Surprisingly this coherent reading of Article 26 seems to be underutilised or undervalued when academics or commentators are examining national restrictions on refugee movements. It is suggested that further research and discussion in this area of the 1951 Convention is needed. It should be noted however that this view is not universally held. Goodwin-Gill and McAdam (2011, p.414) propose that Article 26 would not necessarily be breached in situations of camps. They argue that state practice has shown over time that states are free to ‘prescribe the conditions under which asylum is to be enjoyed,’ which includes the right to confine refugees to camps, decline the right to work and grant permanent or temporary residence.³⁵ There is room nevertheless to question the legal justification of this argument. As Hathaway (2005, p.173) notes, while state practice does aid the interpretation of a treaty provision,³⁶ the practice of states alone should not give rise to a legal norm, which in turn could then be used to challenge the applicability of a treaty provision. This paper will attempt to move this debate forward by analysing state practice, through national legislation and policy, in regards to this key section of Article 26.

1.1.2 Article 3 of the 1951 Convention

Finally, it is useful to highlight the convention’s non-discrimination article (Article 3³⁷), in particular issues surrounding the creation of camp policies for refugees and the restriction of rights that come with these policies. Article 3 on non-discrimination only becomes relevant once another article is affected and is therefore not a generalised prohibition on discrimination (Marx and Staff, 2011). The general consensus is that this clause relates to discrimination *between* different classes of refugees, *rather* than between refugees and nationals or refugees and other aliens (Grahl-Madsen, 1997 and Marx and Staff, 2011). This does not appear entirely satisfactory. As Grahl-Madsen (1997, p. 8) notes, even the delegates at the time of the drafting of the 1951 Convention pointed out that this meant a ‘Contracting State would only need to

³³ This argument is supported by Hathaway (2005, p.719) and Edwards (2011b, p.16) agrees: ‘...special restrictions vis-à-vis refugees and stateless persons are not permitted.’

³⁴ This would not apply in situations of emergency or before a refugee has been ‘regularised’ (Hathaway, 2005). Secondly, reservations placed on Article 26 by states can have the effect of voiding this section of the Article or the whole Article.

³⁵ Robinson (1957) also believed that in special situations, camps would not breach Article 26, even though these camp policies did not apply to aliens generally.

³⁶ Art. 31(3)(b) of the VCLT (1969).

³⁷ Article 3 states: ‘The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.’

reserve prejudicial treatment for all refugees in order to avoid contravening the provisions of the Convention.'

This would seem to put refugees at a disadvantage in relation to protection from discriminatory measures (such as closed camps for all refugees). Yet, as Hathaway (2005) notes, in reality refugees are generally fully protected through the human rights norms of international human rights law such as Article 2 of the ICCPR. This article prohibits discrimination on a list of grounds that includes 'other status', which Hathaway (2005) suggests would cover refugee status. In addition, the Human Rights Committee confirmed a state's obligation to guarantee each right under the treaty 'without discrimination between citizens and aliens' (UN Human Rights Committee, General Comment No. 15). Therefore it appears that the rights set out in the ICCPR are 'thus fully inclusive, prohibiting every kind of status-based discrimination (including on the basis of refugee status)' (Hathaway, 2005, P.249).³⁸

1.2 Human Rights Law

There is now a general acceptance that the 1951 Convention should be read in conjunction with general human rights law.³⁹ As seen above in relation to the right to non-discrimination (Article 2 of ICCPR), this is (in theory at least) an important development for the overall protection of refugee rights, particularly where the 1951 Convention may be silent or create legal or normative gaps. This sub-section focuses on the literature surrounding the relevant article in the ICCPR, which sets out the right to freedom of movement for refugees.

1.2.1 The Right to Freedom of Movement and Choice of Residence

Article 12 of the ICCPR concerns the right to freedom of movement of persons legally within the territory of a member state and the right to choose a place of residence. Article 12(1) has similar restrictions to Article 26 of the 1951 Convention, as the article only applies to persons lawfully within the territory. The Human Rights Committee (HRC General Comment No. 27, 1999, para.4) stated:

'The question whether an alien is 'lawfully' within the territory of a State is a matter governed by domestic law, which may subject the entry of an alien to the territory of a State to restrictions, provided they are in compliance with the State's international obligations.'

Once an alien has been regularised he or she is then considered to be lawfully in the territory (HRC General Comment No.27) and recognised refugees should therefore be considered lawfully in the territory (Edwards, 2011b).

Marx (2011) suggests that 'lawfully' in this context refers to the national legal system, meaning the ICCPR accepts the sovereign power of the state to control the legality of aliens (through legislation), i.e., who is lawfully within the territory and who is not; therefore, a state has the ability to refuse entry or remove aliens. With refugee law, however, under Articles 32 and 33 of the 1951 Convention (relating to expulsion and the prohibition on refoulement) this is not the case, as a refugee 'may not be refused entry at the border', but rather must be granted (at least temporary) asylum (Marx, 2011). Once an alien is lawfully in the territory he or she has the same claim to freedom of movement as nationals (Nowak, 2005).⁴⁰

Article 12(3) sets out the restrictions on freedom of movement that are permissible by states. The use of these restrictions has to be *necessary*, which according to Nowak (2005) means

³⁸ Discussed further in Chapter 3 and also see Hovil (2015).

³⁹ See Hathaway (2005) and Durieux (2009).

⁴⁰ Durieux (2009) notes how under international human rights law, the incremental enhancement of rights has become the norm (known as *progressive realisation* under the International Covenant on Economic, Social and Cultural Rights). While needing further study, it is possible that states are starting to see freedom of movement in a similar light.

that a restriction is consistent with 12(3), not when a state believes it fulfils one of the list of purposes (protect national security, public order, public health or morals or the rights and freedoms of others), but rather only when the restriction is necessary to achieve that purpose. While there is a broad discretion given to national legislation in these matters, an *objective minimum standard* test is used to see if the requirement of *necessity* is fulfilled (Nowark, 2005). The Human Rights Committee insists on using *proportionality* as a means of evaluating whether the standard has been achieved. This results in a balancing act between the right to freedom of movement and the interests of those protected by the imposed restrictions.⁴¹ Little academic work has considered how governments restrict freedom of movement in national legislation and how they approach the issues of proportionality and necessity, and this paper will therefore attempt to bridge this gap.

The final section of Article 12(3) states that any restriction must be consistent with the other rights guaranteed in the ICCPR, specifically the principles of equality and non-discrimination. 'Thus it would be a clear violation of the Covenant if the rights enshrined in article 12, paragraphs 1 and 2, were restricted by making distinctions of any kind, such as on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'⁴² Using this interpretation, Field (2006) concludes that if any restrictions are imposed *only* on an asylum seeker or a group of asylum seekers then its compatibility with Article 12(3) and Article 2 would need to be questioned.⁴³ Furthermore, 'an assessment would need to be made on an individual basis to justify any particular restrictions, rather than on a group basis' (Field 2006, p.14). This reading of Article 12 has obvious implications for African states that have blanket camp policies for large groups of refugees, and will be examined further in Chapter 5.

Finally, commentators have noted that the wording of Article 12(3) is fairly broad and as a result allows for wide interpretation by national governments (Kamanga, 2008). In addition, as Hovil and Okello (2008) point out, freedom of movement has a derogable status, implying that there are instances in which it can be restricted.⁴⁴ The Human Rights Committee has however confirmed that the overriding right to free movement must be respected, restrictions notwithstanding (HRC General Comment No. 27, 1999).

To conclude, while international law conventions have set out the right to freedom of movement for refugees, there does not appear to be clear consensus amongst experts on a number of key points: when the right is applicable (i.e. what level of attachment with the host state is needed); more generally, how the right should be interpreted at the national level; and finally when restrictions on the right are permitted.⁴⁵ It is suggested (and will be investigated further below) that this lack of clarity has left room for wide interpretation by states. In addition, the analysis by Marx (2011) on how Article 26 of the 1951 Convention does not permit specific restrictions on refugees' freedom of movement unless there are similar regulations affecting aliens in general needs further attention. It appears to be an important legal tool, which has either been misunderstood or underused by academics, practitioners and international organisations. The next chapter will build on these discussions by outlining literature that examines the geopolitical, social and economic structures that exist in the African context, which result in the implementation of camps as a means of housing refugees. By examining these structures, it is hoped new understanding can emerge into how states justify (or alternatively, do not feel the need to justify) these approaches within the confines of the international legal frameworks set out above.

⁴¹ It must also be the least intrusive means that might achieve the desired result (HRC General Comment No. 27, 1999).

⁴² HRC General Comment No. 27, at para. 18

⁴³ Article 2 is the non-discrimination article in the ICCPR.

⁴⁴ Article 4 of the ICCPR grants states the power to derogate from certain obligations under the treaty in times of public emergency. Article 12 is also not included in the exceptions (non-derogable) rights listed in Article 4(2).

⁴⁵ While outside the scope of this paper, the relationship between the ICCPR and the 1951 Convention in relation to the right to freedom of movement of refugees warrants further study.

2 Freedom of Movement and Camps in Africa

The topic of why refugees are regularly subjected to policies of camps and restrictions on freedom of movement in Africa has received a great deal of attention in academia since the 1990s.⁴⁶ For the purposes of the present study it is sufficient to broadly summarise the key issues in an attempt to illustrate how international law is being interpreted or impeded at the national level. First, this will help understand how states rationalise these restrictions on refugees' freedom of movement within the supposed confines of international legal frameworks. Second, as noted in the context of the international refugee regime more broadly by Schmidt (2008), how international refugee law is altered and implemented at the national and local level feeds back and informs the overall understanding of the international refugee regime at the global level.⁴⁷

The chapter is split into three parts; first it looks at the changing response to refugee movement over the last 50 years; it then focuses on the role of the state in the setting up and continued existence of camps; before finally looking at the role of UNHCR. The chapter also proposes the focus in academic literature should be realigned from a perceived bias towards the culpability of UNHCR in the continued existence of camps, towards a more even-handed critique balancing the roles and responsibilities of host states and UNHCR.

2.1 Historical Context and the Movement of Refugees on the Continent

The politics of refugee reception have changed dramatically in Africa over the last 50 years. In the 1960s -70s, states traditionally had an open-door policy to refugees with local communities who viewed refugees as victims of colonised rule and received them warmly. Rutinwa (1999) sees this period after the signing of the OAU Refugee Convention in 1969 as the 'golden age' of asylum in Africa, with states establishing 'some of the most open borders and welcoming policies towards refugees anywhere in the world' (Fielden, 2008, p.2). By the 1990s, attitudes had begun to change however, with states starting to suggest they could no longer maintain these open door policies (UNHCR, 1997b). The reasons for this shift in policy are well documented. First, the sheer size of the refugee populations and unequal distribution of refugee populations created problems (Van Garderen and Ebenstein, 2011).⁴⁸ Second, with the democratisation of many states and increased refugee movement due to civil war, attitudes began to change. The local populations with new voting power no longer saw refugees as kin fighting colonisation but rather outsiders and a threat to limited resources. In response to this shift in attitude and with the added pressures of re-election, governments started closing borders and severely restricting the rights of refugees (Crisp, 2000).⁴⁹ Finally, a lack of economic growth in the region added to the strain of absorbing new populations (Crisp, 2000).⁵⁰

In the last decade the situation on the continent has not improved; in fact if anything the last few years have seen a regressive shift, with old patterns of conflict and authoritarianism recurring, coupled with new threats to peace and security (Gebrehiwot de Waal, 2016). This combination of new conflicts and the continuation of longstanding civil wars are producing vast

⁴⁶ For a detailed look at the reasons behind the persistence of camps see Shacknove (1993); Black (1998); Crisp (1998); Crisp (2000); Jamal (2003); Smith (2004); Loescher and Milner (2006); Deardoff (2009); Milner (2011); Hyndman (2011); Bakewell (2014).

⁴⁷ In addition to the impact on the lives of refugees at the ground level. See Schmidt (2014) and Betts and Orchard (2014).

⁴⁸ Since the 1960s and decolonisation, the continent has been witness to a considerable number of civil wars, armed conflict and famine, which have resulted in large refugee movements (Fielden, 2008).

⁴⁹ See Van Garderen and Ebenstein (2011) for a discussion of the changes to refugee reception in Africa over the last 60 years.

⁵⁰ This is of course a non-exhaustive list (for example also see issues of 'failed states' and the push towards a model of the modern Western state after decolonisation (see Chabal and Daloz 1999). In addition, there are a multitude of political, economic and structural pressures on a local level that also influence reception policies within the continent (Schmidt, 2014).

numbers of new refugees. For example, the current crisis in Burundi has seen over 250,000 refugees flee to bordering countries (UNCHR, 2016e); 70,000 refugees have fled from Nigeria due to insurgents in the north east of the county (UNHCR, 2015); and approaching one in four South Sudanese are currently displaced within their own borders or in neighboring countries (roughly 2.6 million people with 860,000 having fled across the border (UNHCR, 2016b). The continuation of conflicts and general instability in the region also means genuine durable solutions for protracted situations in countries such as Kenya and Tanzania seem some way off.

As Okoth-Obbo (2001) notes, the sheer size of refugee populations in addition to the factors mentioned above has contributed to a shift in reception policies since the 1990s. Closed camps, constraining movement and access to employment and education have become the norm. The transference from long-term integration models to new forms of temporary reception is intended to facilitate the eventual return of refugees to their home state. As Kibreab (1999) suggests, regardless of the length of stay in their host state, refugees in Africa are now treated as temporary guests. This can be seen most acutely in areas with the highest concentration of refugee populations, for example in the Great Lakes, where repatriation is the most heavily promoted durable solution (Hovil, 2013).⁵¹ The next two sub-sections will analyse these issues further by distinguishing between the roles of the state and UNCHR, before discussing recent shifts in UNHCR policy, which have a new focus on freedom of movement and mobility.

2.2 The Role of States

As Milner and Loescher (2011, p.19) note, policy decisions on refugees occur within the political sphere and are therefore 'informed by a range of constraints and priorities that are unrelated to the question of refugees, ranging from security and state capacity to development and economic relations.' In Africa, mass influxes of refugees present serious economic, environmental and security threats (Jacobsen, 2002). Consequently, host states have strong incentives for keeping large refugee populations separate from local communities (Kagan, 2013). While not exhaustive, the geopolitical, social and economic structures that have been suggested as motivations for camp policies on the continent include: responsibility sharing amongst donors and the international community (Sommers 2001); visibility of the issue to promote greater funding and assistance and reduce the effect of donor fatigue (Loescher, 2001); security issues for the local population (Deardorff, 2009); capacity issues (Field, 2010); the rights of the local population (Goyens et al, 1996; Jacobsen, 2002); and security issues for the refugee population (Hovil, 2007; Jamal, 2003).

This section will look at some of these structures in more detail, firstly capacity, secondly international burden-sharing and finally security. The capacity of a state to host refugees is an important factor that is often overlooked. The developing world hosts over 86 per cent of the world's refugees (UNHCR, 2014), resulting in an inequitable distribution of refugee populations having pronounced effects on the host states (Van Garderen and Ebenstein, 2011): from additional demand on services and infrastructure, to the reduction of economic and social rights of the local population. Furthermore, countries next to refugee-producing neighbours receive an even greater share of the burden, causing many states in the Global South to be ill-equipped to carry out their duties towards refugees (Field, 2010). As Field (2010 p.533) notes, 'attempting to hold an 'incapable' state accountable for neglecting a duty may result in moral vindication but is unlikely to achieve material compensation or change'.⁵²

Linked to the issue of capacity is the lack of international burden-sharing. While there are no internationally binding obligations on states to co-operate, Paragraph 4 of the Preamble to the

⁵¹ In reality, internal conflicts persist for decades; meaning repatriation is often not a viable option. Even when a conflict has ended, the level of destruction often means it will take decades to rebuild a functioning state that can support its citizens and during these periods of weakened institutions, drivers of mobility and violence, such as criminal and terrorist acts often flourish (Horwood and Reitano, 2016).

⁵² The Executive Committee of the National Security Council (ExCom) has noted that the burden of large refugee movements is also seen in the region as a whole, rather than just the first host country, for example as conflict spreads or displacement widens (ExCom, 1996). Also see Kibreab (1989).

1951 Convention notes that the granting of asylum may place heavy burdens on certain countries and therefore international co-operation is needed. In addition, the OAU Refugee Convention sets out in Article 2(4) and 2(5) how states in the spirit of African solidarity and international co-operation should assist other states to lighten the burden of hosting refugees. Yet while the scope of 'burden' has also been increased from past the emergency phase to the three traditional durable solutions (UNHCR 2010) and states have agreed verbally that responsibility sharing is important, these agreements have not translated into a normative or legal framework (Gottwald, 2014). Thus, the continued push for containment of refugees on the African continent can in part be blamed on a deep mistrust in an 'international system that has all too often failed to deliver fairness' (Durieux, 2009, p.2).⁵³ States in Africa are wary of adopting policies of local integration, which are perceived as 'politically unfeasible' and should only to be considered as a last resort once repatriation or camp-based care have failed' (Polzer, 2004 p3).⁵⁴ In contrast, camps keep refugees visible to the wider world, effectively forcing the international community to share at least some of the burden of hosting the population.⁵⁵ While Aleinikoff and Poellot (2014) point out that the height of burden-sharing will usually exist during emergency phases of mass influx when INGOs assemble resources and when public attention is at its peak, this reliance on external funding can be long-term. For example, Crisp (2003) notes that the Kakuma camp in Kenya was still entirely dependent on external aid 10 years after it came into existence.⁵⁶

Another major issue influencing camp policies in Africa is security (Abuya, 2007; Schmidt, 2003; Milner 2009). These can range from attempting to reduce conflict between local populations and refugees, protecting refugee populations from attacks in neighbouring warring countries, to perceived increases in criminality if refugees are allowed to integrate locally (Schmidt, 2003).⁵⁷ Recently however, all transnational movement by refugees and asylum seekers are being constructed as security threats and illegal.⁵⁸ Through a process of securitisation, refugees and other forced migrants are seen as 'others' who are a security risk and a threat to the identity of the nation (Haddad, 2008).⁵⁹ As Saunders (2014) notes, there has been a paradigm shift in asylum policy, from a focus on 'humanitarian-driven refugee protection enshrined in international law, to one prioritising the protection of national security interests' (p.72).⁶⁰ Meaning, while security concerns by host states do warrant serious attention, it is important to always differentiate between genuine security issues and the securitisation of refugee movements by states for their own political gains.

Various case studies have suggested that many of the arguments set out above are based on potentially misinformed assertions. Furthermore, attempting to exercise control over a refugee population through encampment policies can create far more negative outcomes than integration policies (Black, 1998). For example, Hovil (2007) found that in studies of local integration in Uganda social tension and chaos did not occur. In contrast, camps in Africa can be very unsafe environments, and in some cases, by seeking refuge in a neighbouring state, refugees can be simply exchanging one form of persecution for another (Crisp, 2003). For instance, the US State Department's 2015 Trafficking in Persons report noted that children in

⁵³ Also see Amnesty International (1997) and Dryden-Peterson and Hovil (2003) on this subject.

⁵⁴ Also see Kagan (2011).

⁵⁵ The visibility of refugees generates more funding and delays the on-set of donor fatigue (Jamal, 2003 and Crisp 2003).

⁵⁶ See Betts (2009) for analysis of how international relations can help understand the failure of international burden-sharing within the refugee regime and what lessons can be learnt.

⁵⁷ See Milner (2009) for a detailed discussion of the meaning of security in this context.

⁵⁸ Many academics have commented on this clear 'sedentary bias' that affects state-centred responses to refugee movements (see for example Bakewell (2008); Long (2014)). Over time, this bias has manifested itself in various ways: placing refugees in camps, attempting to keep refugees in their home state (for example the creation of 'safe-zones') and the introduction of development and poverty reduction programmes.

⁵⁹ See Hammarstad (2011 and 2014) for an overview.

⁶⁰ Also see Bakewell (2014) for a discussion of how camps segregate refugees from citizens which supports the primacy and power of the nation state, but also helps construct the western idea of the 'refugee'.

camps in Kenya are at risk of being conscripted into armed groups such as al-Shabaab, sex trafficking or recruited for forced labour outside the camp (Moret, et al, 2015).

2.3 The Role of UNHCR

The wealth of literature on UNHCR involvement in encampment policies has had a particular focus on Africa. There are obvious reasons for this: the institution's support for funding and setting up of camps, to past policy papers that appeared to support or even push for the encampment of refugees. Yet in recent years, there appears to be a concerted effort by UNHCR to move away from these types of programmes in the South, with a renewed focus on the integration of refugees. This section briefly sets out the history of UNHCR and camps, before turning to discuss how new approaches are shifting focus to movement and mobility-based solutions for protracted situations.

Between the mid-1970s and 1980s, the use of the 'care and maintenance' model in camps⁶¹ by UNHCR dramatically increased (from an annual expenditure in 1975 of \$76 million on these programmes to \$500 million in 1980 (Loescher, 2001)). By the 1990s, UNHCR policy still had (at the very least) a focus on 'containment' (UNHCR, 1997b) with encampment part of its general policy (Verdirame and Harrell-Bond, 2005). Under this 'care and maintenance' model, UNHCR believed that by housing refugees all in one location, they could respond better to the urgent need for food, shelter, education and health (Loescher, 2001). In addition, camps made refugee situations more visible and therefore acted as a useful tool in attracting donors (Stevens, 2006).

As a by-product of this approach however, the 'notion of 'state responsibility' (i.e. the principle that governments have primary responsibility for the welfare of refugees in their territory) becomes progressively weaker in its application,' (Slaughter and Crisp, 2008, p.124). UNHCR and partnering NGOs take on wider responsibilities, ending up with a situation where UNHCR becomes a 'surrogate state' for refugees (Slaughter and Crisp, 2008). The shift in responsibility for the protection of refugees brings with it a legal void (Stevens, 2006) and causes uncertainty over the enforcement of rights and prevention of violence.⁶²

Recently UNHCR has accepted that the care and maintenance model was 'flawed in several ways' and started seeking new approaches focused on self-reliance as a means of moving towards one of the three durable solutions (UNHCR 2008c). For example, with the publication of its 2009 Urban Policy and 2014 Policy on Alternatives to Camps, the institution has begun to reassert that freedom of movement is a fundamental human right and that mobility should be included in durable solution frameworks (UNHCR, 2009a and 2014).⁶³ Taking the policies in turn, the 2009 Urban Policy is a welcome shift to a rights-based approach to the protection of refugees, with freedom of movement, right to work and adequate travel documents being seen as core goals (UNHCR, 2012). It also has a focus on what it refers to as 'state responsibility',⁶⁴ whereby the overarching principle that should govern policy is that states have responsibility for refugees with UNHCR not being seen as an alternative.⁶⁵ It has not been greeted with universal support however, with many suggesting it does not go far enough in relation to freedom of movement. As Verdirame and Pobjoy (2013b) highlight, under the policy a refugee would still theoretically need a 'good reason' to live in an urban setting. This concept

⁶¹Academics and UNHCR publications refer to the 'care and maintenance' programmes of the 1980s, however the author to date has been unable to locate where they originated.

⁶² For a discussion on the legal implications of this assumed responsibility, see Goodwin-Gill and McAdam, (2011, p.466).

⁶³ See Long (2010) for a discussion.

⁶⁴ Note this does not have the same meaning as under international law, but rather a 'sense of competence or legal authority' (Verdirame and Pobjoy, 2013b).

⁶⁵ Yet the policy does not address how this is possible in practice. As Kagan (2013) suggests, what motivation do local governments have to 'open their schools, their medical clinics, their employment markets, and their housing supply to refugees, especially in a climate of xenophobia or economic distress?' Moving refugees to camps and claiming they are the responsibility of the international community is still seen as a preferable alternative.

of 'good reason' does not appear to be based on international law and as such, Verdirame and Pobjoy (2013a) argue that freedom of movement is being framed without the 'relevant legal tests'. The policy also states that in some situations, camps are a necessity, although it stops short of giving relevant examples or hypothetical scenarios (UNHCR, 2009).

In 2014, UNHCR published its 'Policy on alternatives to camps' (UNHCR, 2014). This publication goes further by setting out how UNHCR will build into its operational response alternative approaches and ways to enable camps to be phased out at the earliest possible opportunity. The policy acknowledges how integration approaches remove the 'limitation on the rights and freedoms of refugees' that are integral to camp setups. It also focuses on maximising mobility to allow:

'refugees greater access to employment and education and possibilities to build their livelihoods assets and skills and to send remittances, including through regional frameworks that facilitate the movement of labour, in order to promote dignity, the enjoyment of basic rights and to ensure that refugees are better prepared to achieve durable solutions.' (UNHCR, 2014).

Hovil (2014) suggests this latest policy could well be seen as a paradigm shift in refugee protection, with its switch of focus to the autonomy of refugees and the value they can add to the local community, rather than solely on immediate aid and seeing refugees as simply victims. Yet moving policy away from decades of operational work within camps will be a seismic shift in how UNHCR operates. Furthermore, a great deal will depend on successful implementation on the ground, which can only happen with the co-operation of the host state.

The fact that states still have camp policies that restrict refugees' fundamental rights such as freedom of movement cannot be blamed solely on UNHCR (Kagan, 2013). While a shift of focus from UNHCR to the rights being violated within a camp setting is welcomed, politically this is not always feasible. In fact, it is suggested that if UNHCR pushed strongly for this type of approach in all situations there would be great risk of early refoulement (Crisp, 2003). Therefore at times, UNHCR has concentrated on ensuring states allow refugees to enter their territory over the long-term fulfilment of rights, as concerns over non-refoulement and immediate safety take precedent (Jamal, 2002).

Yet while the above is true, many commentators still feel that UNHCR could advocate for these new policies harder when negotiating with states. For example, refugee camps today still show clear signs of the past care and maintenance programmes (Aleinikoff and Poellot, 2014). In addition, in many countries in the South, UNHCR still run RSD programmes where refugee status and access to aid, healthcare, education and food is entirely dependent on refugees giving up their right to freedom of movement and employment.⁶⁶ These approaches restrict the full implementation of international refugee regime, cause secondary movements of refugees and as a result have the potential to lower protection standards over time. In the following chapters, this paper will look further at UNHCR's evolving role in relation to encampment policies in Africa and the effect these have on a refugee's right to freedom of movement.

It is important to place the legal discussion in Chapter 1 (and the analysis of national legislation to follow) in the context of the key geopolitical, economic and historical structures that are causing these extreme restrictions on the freedom of movement of refugees and ultimately leaving refugees in a state of limbo in protracted situations.⁶⁷ Furthermore, there has been a tendency in academia to focus less on state responsibility and more on the negative role of UNHCR in encampment policies and restrictions on freedom of movement. As a result, at times it can appear as if there is an acceptance by scholars and practitioners that states will violate their international responsibilities under international law. Through analysis of state practice, this study hopes to start a new, more nuanced discussion; one that fairly balances the

⁶⁶ Discussed in Chapter 5 in relation to de facto restrictions on freedom of movement. For example in Zambia (Chiasson, 2015); Uganda (Schmidt, 2014); and Tanzania (although it also has government-run settlements) (Chiasson, 2015).

⁶⁷ See also Schmidt (2003); Deardoff (2009); Long (2010); and Zetter (2015).

responsibility of states to live up to their international commitments with the responsibility of UNHCR to protect refugees.

3 Regional Protection for Freedom of Movement of Refugees

Following on from the discussion on state and UNHCR responses to refugee movement on the African continent, this chapter outlines regional legal developments (in the form of regional conventions) that relate to refugee's freedom of movement. These conventions (or at least the implementation and interpretation of these instruments by states) may go some way in explaining the apparent gap between international law and state behaviour in Africa.

Two regional instruments, the 1969 Convention Governing the Specific Aspects of Refugee Problems ('The OAU Refugee Convention') and the 1982 African Charter of Human and Peoples' Rights ('African Charter') refer (either directly or indirectly) to the freedom of movement of refugees. As Sharpe (2012) notes however, there has been surprisingly little academic study of these regional instruments. As will be shown below, this has resulted in confusion and misunderstanding surrounding the object and purpose and also the implementation of the conventions. The chapter concludes by raising the suggestion of a potentially new form of regionalism within the refugee regime. Tentative conclusions suggest that this lack of understanding regarding the object of purpose of the instruments (in particular the OAU Refugee Convention) has allowed state practice to fill a legal and normative void by interpreting the instruments with wide discretion. This new form of regionalism as will be discussed in future sections, appears to be beaching international law and severely restricting the freedom of movement of refugees on the African continent.

3.1 The 1969 Convention Governing the Specific Aspects of Refugee Problems

Africa is the only region in the developing world, which has adopted a binding regional refugee legal instrument (Sharpe, 2012). The OAU Refugee Convention is therefore an important document, not least because it sets out for the first time in a legal international convention, important normative refugee concepts such as responsibility sharing, temporary protection, and voluntary repatriation. Nonetheless, authors such as Sharpe (2012) suggest the convention often remains poorly understood. While many academics see the OAU Refugee Convention as complimentary instrument to the 1951 Convention, as will be seen below, state practice appears to promote an alternative reading of the regional convention.

This confusion over the interpretation of the OAU Refugee Convention can be illustrated in the context of freedom of movement of refugees. There is no specific article relating to non-restricted freedom of movement for refugees in the convention, however Article 2(6) states that refugee settlements must be located away from the border of the country of origin.⁶⁸ As Schmidt (2003) notes, in the absence of any right to freedom of movement detailed in the convention, many African states use Article 2(6) as justification for the control of the movement of refugees and the creation of camps for mass influxes. While this interpretation by states of the OAU Refugee Convention seems at odds with Article 26 of 1951 Convention,⁶⁹ it suggests a focus by states on regional instruments over international ones.

Academics in general share an opposing view. There appears a board agreement that the OAU Refugee Convention and the 1951 Convention should be regarded as *cumulative* instruments, i.e., the OAU Refugee Convention should to be read as a 'regional complement' to the 1951 Convention.⁷⁰ Under this interpretation, refugees in African states that are parties to both conventions should enjoy all the rights set out in Articles 3 – 34 of the 1951 Convention. Therefore, states are not permitted to rely on Article 2(6) of the OAU Refugee Convention as justification for closed camps that are breaching Article 26 of the 1951 Convention. These

⁶⁸ Article 2(6) of the OAU Refugee Convention states 'for reasons of security countries of asylum shall as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.'

⁶⁹ Schmidt (2003) goes further and suggests that the whole OAU Refugee Convention is in conflict with Article 26 of the 1951 Convention.

⁷⁰ Durieux and Hurwitz (2004) support this assertion by noting Article VIII(2) of the OAU Refugee Convention, which defines itself as the 'regional complement' to the 1951 Convention. Also see Sharpe (2012); Rwelamira (1983); Durieux and Hurwitz (2004); and Durieux and McAdams (2004).

distinct interpretations of the regional convention will be investigated further when the paper turns to look at state practice in relation to camps on the continent.

3.2 The 1982 African Charter of Human and Peoples' Rights ('African Charter')

From the beginning of the 1980's, the adoption of a number of regional instruments showed (in theory at least) a new push by states in Africa to promote basic human rights and fundamental freedoms (Mindzie, 2014).⁷¹ The African Charter in 1982 started this apparent normative shift and for the purpose of refugee protection is a key regional instrument. It recognised for the first time the right to 'seek and obtain asylum' (Sharpe, 2012). As with other African conventions however, it is also famously generous in giving states wide interpretative discretion (Hovil and Okello, 2008).

This state discretion can be seen in relation to refugees' movement on the territory of a host state. Promisingly, the African Charter has a specific article in relation to freedom of movement: Article 12(1) grants freedom of movement and residence to every individual within the borders of a party to the African Charter, 'provided he [or she] abides by law'. The section 'provided he [or she] abides by law' however has been criticised for being imprecise, 'characteristically vague' (Beyani, 2000) and ultimately appears to grant states wide discretion. As Hollenbach (2008) and Hovil and Okello (2008) point out, like the ICCPR, the African Charter grants freedom of movement while at the same time limiting it.

The regional instrument, which is similar to the ICCPR, does nevertheless stress the fundamental nature of this freedom, and the 'international sources of law incorporated in the [the African Charter] guarantee multiple rights and freedoms whose full exercise would be substantially curtailed without a baseline level of mobility' (Hollenbach, 2008). Finally, as discussed previously in relation to the ICCPR, encampment policies based on refugee status would appear to be a form of discrimination. State run camp policies would therefore appear to also breach the non-discrimination article in the African Charter (Hovil, 2015).⁷²

To conclude, this paper proposes two possible readings of the interaction between regional instruments, the state, and the freedom of movement of refugees. First, regional instruments in Africa simply give states wider discretion than the international instruments discussed in Chapter 1 with regards to permissible restrictions on freedom of movement of refugees. This can be seen for example in the way Article 12(1) of the African Charter has been drafted, with a focus on national law. Another possible reading is that a new form of regionalism⁷³ is emerging. State behaviour suggests a very wide interpretation of the regional conventions, which has benefited states to the detriment of refugees. Can this apparent regional behaviour be seen as a deliberate collective action to address a common problem? Meaning states see mutual benefit in cooperating in this way – i.e. the containment of refugees is seen as bringing stability to the region.⁷⁴ This is open for discussion and needs further study. At the very least, it is suggested that this regional behaviour has filled a normative and legal void, created by a lack of understanding of the object and purpose of the instruments, in particular the OAU Refugee Convention. Furthermore, this new form of regionalism suggests an attempt by states to constrain and recast international refugee regime norms (such as freedom of movement) regardless of the fact they breach international law. The following chapters will examine state practice to test this assertion.

⁷¹ For example, the African Charter for Popular Participation in Development (1990) and African Charter on Democracy, Elections and Governance (2012).

⁷² Article 2 of the African Charter, states that '[e]very individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.'

⁷³ Broadly defined here as 'regional inter-state cooperation' (Hurrell, 1995 and Betts, 2009). Regionalism is however notoriously hard to define. For example, Hurrell (1995) and Betts (2009) both set out five different definitions.

⁷⁴ See Betts (2009) for a discussion of regionalism in the context of forced migration.

4 Methodology

The sample for this study was chosen using the method of 'purposive sampling' (Russell-Bernard, 2011, p.145).⁷⁵ African states with refugee camps were chosen in order to investigate how they specifically treat the right to freedom of movement of refugees. By analysing the subtle set of issues relating to encampment policies of states, it is suggested that important themes will emerge on how these states restrict freedom of movement. Furthermore, by choosing a sample of states that are arguably worst affected by freedom of movement issues,⁷⁶ it is suggested that analysis can then be broadly applied to the region in general.

The sample was selected using UNHCR (2011a) determination of what constitutes 'a camp'. Therefore, states with settlements were not included.⁷⁷ In relation to individual states, Egypt was not included in this sample, as refugee camps had only recently been deployed as a response to the Syrian Crisis, and so information on the treatment of refugees in the camps was not readily available at the time of the data set collection.⁷⁸ Analysis of the national legislation and government policies of the Central African Republic (CAR), Sudan and South Sudan were used, even though the countries are currently experiencing forms of unrest.⁷⁹ This is because policies and national legislation in these states were found to include restrictions on freedom of movement of refugees that apply in peacetime.

For each state, the following review was undertaken:⁸⁰

- (a) Review of national legislation relevant to refugees (these included Refugee Acts, National Constitutions and Alien Acts).⁸¹ All national legislation was taken from Refworld.com⁸²; therefore, the study has been guided by what was available (and potentially not available) on the website. French documents were translated using the official UN French and English versions of the ICCPR as templates for interpretations of key words;
- (b) Country reports located on Refworld.com;
- (c) UNHCR global reports and country profiles; and
- (d) Academic and UNHCR case studies.

The following chapter details the findings of the study. While the sample is purposive and based only on publically available data, broad patterns in state behaviour and tentative conclusions can still be drawn. The findings also highlight the urgent need for further study to fully understand how states in Africa are responding to the right to freedom of movement for all refugees.

⁷⁵ Through this approach you select the purpose you wish the subjects to serve.

⁷⁶ I.e. states with encampment policies traditionally having the highest populations of refugees on the African continent.

⁷⁷ There are implications and drawbacks in relation to this methodological approach. For example, according to UNHCR Statistical 2010 Yearbook, 10th Edition (which the sample was selected from), Zambia only had settlements and was therefore not included in the sample (UNHCR 2011a). By 2015 however, UNHCR had revised their categorisation and noted Zambia had 3 camps (UNHCR, 2015a). This is more in line with academic research which suggest camps have been present in Zambia since 1999 -2000 (Darwin, 2005). Note that the latest statistical handbook (UNHCR, 2015b) does not include a breakdown of location/place of residence. See Schmidt (2003) for a discussion on the implications of defining camps and settlements.

⁷⁸ See 4.2 below and Appendix 1 Table 1 to 10 for an explanation of the analysis. The review amounted to a data set ranging from 2009 – 2013.

⁷⁹ As noted in the Introduction, restrictions on freedom of movement under international humanitarian law are beyond the scope of this paper.

⁸⁰ For a breakdown of findings and further information on how and where data was collected see Appendix 1 Table 1 to 10.

⁸¹ Available at Refworld.com or upon request of author.

⁸² The CAR Refugee Act was not available on Refworld.com (last checked 09/09/2013) and so has been excluded from this analysis.

5 Findings⁸³

This chapter analyses states' responses to freedom of movement of refugees in Africa. By investigating states that generally have the largest flow of refugees, they are most likely to show examples of 'worst case scenarios' in relation to encampment policies and restrictions on freedom of movement. Therefore the findings, where possible, will be analysed on three levels:

1. What the findings tell us about African states with camp policies;
2. What the findings tell us about how refugee rights are restricted on the African continent generally; and
3. What the findings tell us about international law.

Due to the lack of previous study in this area and the relatively small sample used, as you move from level 1 to 3, analysis of the findings will be more open to debate and will therefore need further research.

5.1 Overview of Findings⁸⁴

As can be seen from Appendix 1 - Table 7, the total sample consisted of twenty-seven African states, with twenty-five of them being parties to the 1951 Convention, twenty-four being parties to the OAU Refugee Convention and twenty-six being parties to the ICCPR.⁸⁵ Eighteen of the twenty-seven also have national refugee legislation that came into force after the state signed the ICCPR and the 1951 Convention. The legislation of the majority of states should therefore conform to their international legal commitments. While analysis of whether states breach international law will be discussed in the subsequent section, it is noted at this stage that the vast majority of states with camps in Africa have forms of restriction⁸⁶ on movement or place of residence for refugees.⁸⁷

⁸³ Note that while the main findings are based on a fixed data set (2009 – 2013), this chapter and the following have been updated with additional commentary in the footnotes, based on recent developments on the continent and in academic research.

⁸⁴ A range of themes not discussed below were also investigated to analyse state behaviour but ultimately discarded due to a lack of initial patterns. Links between the states' legal origins (such as colonisation and influences of Monist and Dualist approaches) were investigated (Appendix 1- Table 8). Secondly, whether national legislation came into force before the state signed an international treaty on refugees was a factor in how states approach freedom of movement (Appendix 1 – Table 1 –3). These factors should not be dismissed, however, as further research is needed.

⁸⁵ Outliers: Djibouti has not ratified the ICCPR (although is a signatory); Eritrea and South Sudan are the only two countries in the sample that are not at least signatories to all of the following: the 1951 Convention, the OAU Refugee Convention and the ICCPR. They are therefore not included in subsequent analysis in great depth.

⁸⁶ This conclusion takes into account de facto restrictions, which will be discussed in detail in section 5.1.3.

⁸⁷ Of the twenty-five states reviewed that have signed the major international instruments relating to freedom of movement, over twenty of them appear to have some form of restriction in place.

Chart 1

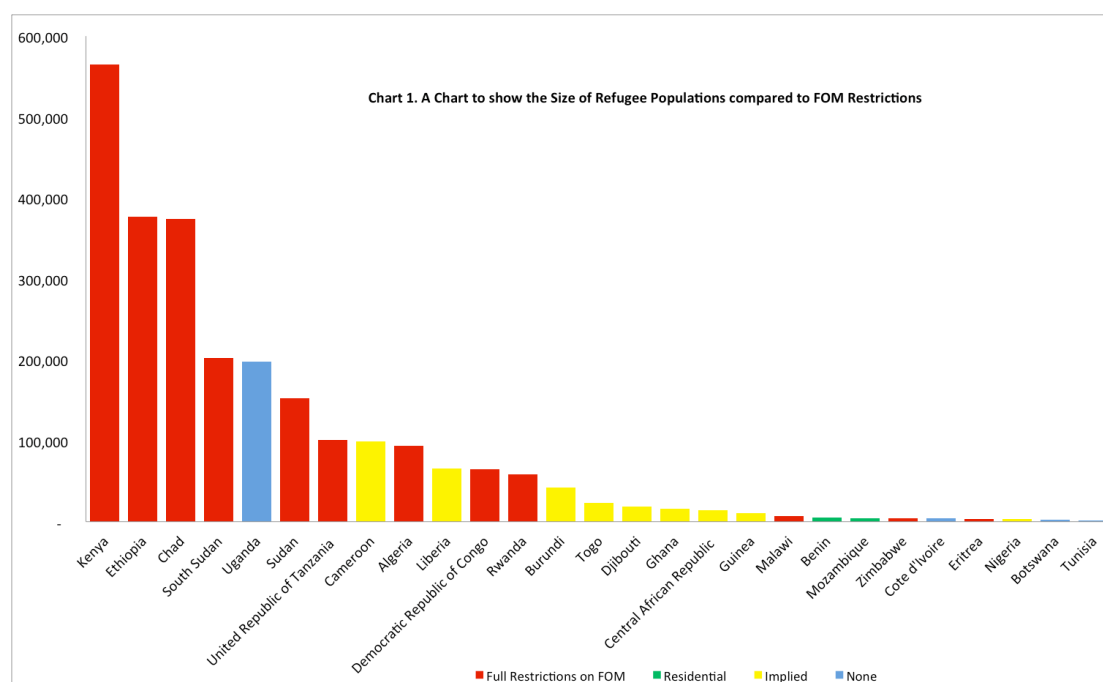


Chart 1 illustrates a trend relating to the size of the refugee population and the level of restrictions on freedom of movement of refugees: the larger the population of refugees, the more severe the freedom of movement restrictions. As discussed in Chapter 1, large movements of refugees can have a massive impact on the host state, from security issues to the rights of local communities. It is unsurprising when you consider the economic and geographical factors affecting certain states with the largest refugee populations, such as Chad, Sudan and South Sudan, that there is an insistence on the visual option of camps where the international community is more likely to assist.

5.1.2 Geographical Patterns

East Africa has the largest population of refugees and the largest concentration of refugee camps (UNHCR, 2011).⁸⁸ All states from this region, with the exception of Eritrea have national refugee legislation but at the same time practice varying forms of restrictions on freedom of movement (see Appendix 1 – Table 10).⁸⁹ Uganda appears to be an exception to the ‘rule’. 2006 Refugee Act Article 30 permits restrictions on freedom of movement of refugees. However despite a refugee population near 200,000, Uganda currently appears to not implement these restrictions.⁹⁰ Refugees technically have absolute freedom of movement, while refugees who elect to live in settlements are provided land to enable them to work. Furthermore, refugees who decide to live in urban areas, while officially not able to work (Uganda has a reservation on Article 17 of the 1951 Convention), have been able to find employment (UNHCR, 2011 – Uganda). There are various reasons suggested for this approach to refugee populations, which runs in stark contrast to other states in the sub region. For example, a new focus and appreciation of local integration as a durable solution (Jacobsen 2001), and an appreciation of creating self-sufficiency and self-reliance in settlements (Kaiser, 2006) have all been welcomed

⁸⁸ See Appendix 1 - Table 7 for a breakdown.

⁸⁹ In addition, in East and the Horn of Africa, free movement protocols agreed by the East African Community (EAS) and the Intergovernmental Government Authority for Development (IGAD) have not yet been implemented by states (Horwood and Reitano, 2016).

⁹⁰ Dryden–Peterson and Hovil (2003) argue that settlements set up for refugees in Uganda have obstacles blocking refugees from leaving the area.

by the Ugandan Government.⁹¹ There are disputes in the research regarding Uganda's non-encampment policy: Hovil and Okello (2008, p.84) note that refugees need to 'prove self-sufficiency before they are allowed residence outside settlements.'⁹²

Broadly speaking, West African states appear to be more open to the free movement of refugees within their borders than other states, regardless of camp policy.⁹³ There are a variety of factors to explain this: first, West Africa has not been witness to the same level of mass influx or movement of refugees as other sub-regions; second, recent movements by the governments and UNHCR also appear to be having an effect. For example, UNHCR noted that countries such as Liberia, Côte d'Ivoire and Ghana should be praised for strengthening their local integration activities, using the free movement protocols of the Economic Community of West African States ('ECOWAS'), (UNHCR, 2007).⁹⁴ Third, in Côte d'Ivoire, repatriation was recently utilised, with the return of 17,500 Liberians and over 7,000 nationalisation decrees were handed out (which affected over 28,000 refugees) (UNHCR, 2013 - Côte d'Ivoire). While this goes some way to explaining why Côte d'Ivoire is one of the few states in the sample that does not appear to impose freedom of movement or residence restrictions on refugees, the state has had to absorb a relatively small refugee population (around 4,000) in comparison to its regional neighbours, such as Liberia (65,000) (UNHCR, 2011a).

Refugees in West Africa are still however encumbered with restrictions on their movement and choice of residence. In 2012, almost 10,000 refugees in Liberia were relocated from host communities and relocated to camps for security issues (UNHCR, 2013 - Liberia). Adepoju et al. (2007) suggest that while freedom of movement is more advanced in West Africa, the objective of complete freedom of movement is still some way off.

5.1.3 Types of Restrictions

The vast majority of states analysed appear to restrict freedom of movement or the choice of residence in some manner (Appendix 1 – Tables 1 to 3). The findings show three ways in which these restrictions occur, either through national legislation and/or government and UNHCR policy.⁹⁵ These are: (1) Clear freedom of movement and choice of residence restrictions; (2) Residential restrictions; and (3) De facto restrictions. It is important to note at this stage, however, that some of these restrictions may not breach international human rights or refugee law.⁹⁶

Information on the conditions of camps in Africa and the specific ways in which they are run has been located from a variety of sources;⁹⁷ however, up-to-date information on the rights enjoyed by refugees and current government policy on camps can be hard to locate. While this is a potential weakness in the study, it also highlights a gap in the current international protection mechanisms in place for refugees.⁹⁸

⁹¹ Also see the recent work conducted by the Humanitarian Innovation Project in relation to research carried out in Kampala and refugee settlements in Uganda (Betts, Bloom et al, 2014).

⁹² See section 5.1.3 below for a discussion of this kind of de facto restriction.

⁹³ See Appendix 1 – Table 1-3 and 10). As discussed previously, due to the narrow sample this conclusion is open to some interpretation.

⁹⁴ ECOWAS (1975) has the aim of strengthening regional economic ties and the freer movement of goods, capital and people. Four years later a Protocol on the Free Movement of Persons, Residence and Establishment was drafted and set out the hope of complete freedom of movement between the states (Adepoju et al. 2007).

⁹⁵ See Appendix 1 – Table 10 for the data supporting these conclusions.

⁹⁶ Section 5.2 will focus on whether these forms of restriction amount to breaches of international treaties.

⁹⁷ See Chapter 4 for details.

⁹⁸ It is suggested that there is a pressing need for yearly independent research on the refugee rights enjoyed and restricted within camps. Reports compiled by UNHCR for Universal Periodic Reviews (UPR) have improved the situation, however the level of detail in the reports can be mixed. For example, there is no reference to standards in camps in Nigeria (UNHCR, 2012 – UPR/Nigeria), while there are detailed recommendations for improving conditions in protracted situations in Ghana (UNHCR, 2012 –

i) Clear Freedom of Movement Restrictions

The first type of restriction is the most extreme, whereby a state, either in legislation or government policy restricts refugees to camps and severely restricts their freedom of movement by operating a closed camp,⁹⁹ or by allowing only small sections of the refugee population to leave the camp on day passes. For example, in Mozambique persons with specific education or training, such as lawyers or nurses are allowed to work outside the camp (Crisp and Kiragu, 2010). Other states, such as Malawi, effectively create closed camps by charging high fees for work permits, which refugees are generally unable to pay, meaning they cannot leave the camp for employment (USCRI, 2009 – Malawi). These types of restrictions can be found in either national legislation, such as in Tanzania, or they can be governmental policy, for example in the case of Rwanda.

Kenya is an example of a state that operates at the extreme end of this type of restriction, with a closed camp policy¹⁰⁰ where ‘departure from such camps is prohibited and those found outside the camps are liable to prosecution for illegal stay, entry or vagrancy’ (Edwards, 2008, p. 812). Sudan and Ethiopia have similar policies, permitted by national refugee legislation. Refugees in Ethiopia are not allowed to work and the state only grants permits to travel for specific reasons, such as medical treatment or educational purposes (USCRI, 2009 – Ethiopia).¹⁰¹ In Sudan, a number of refugees have lived in long term encampments for over 40 years (UNHCR, 2012 – Sudan) and are still totally dependent on outside assistance (Lawday 2002). UNHCR reports that refugees who travel without a travel permit in Sudan are at high risk of arrest, detention and possible deportation (UNHCR 2012b).¹⁰² Closed camps are an extreme example of policies affecting the free movement of refugees. As Deardorff (2009) notes, these types of policy, which affectively remove the right to freedom of movement and employment, led over time to other rights restrictions. Some academics have argued that closed camps may actually amount to torture or at the very least inhuman and degrading treatment (see Edwards (2008) for an overview).¹⁰³

ii) Residential Restrictions

A second type of restriction involves those put on places of residence, but a more open approach to freedom of movement in general. For example, although not in legislation, the government of Benin reserves the right to move refugees into camps (USCRI, 2008 – Benin); however, refugees are generally allowed to participate in most economic activities, and children are allowed to attend school (US DS, 2012 – Benin). This is the least common type of restriction found in the study and while many states may argue their encampment policies fall into this category, much depends on the practicalities and bureaucracy that are involved in leaving a camp. For example, if travel permits are not granted unless there is a specific reason, or if there is a cost attached to exit of camps, freedom of movement is more of an exception, rather than

UPR/Ghana). Furthermore internal reports by UNHCR on conditions in camps or advocacy work carried out by UNHCR field workers are not in the public domain.

⁹⁹ These forms of camp deny refugees the ‘right to leave at will’ (Edwards, 2008, p.812).

¹⁰⁰ Authorised by the Kenyan Refugee Act 2006 and the Kenya Subsidiary Legislation 2009.

¹⁰¹ Newly adopted approaches by the Ethiopian government appear to be softening its stance on freedom of movement. The ‘Out of Camp Policy’ started in 2010 enables some Eritreans who do not have a criminal record to leave camps and work or study in urban centres such as Addis Ababa (UNHCR, 2010 – Ethiopia). While UNHCR estimate that around 8,00 Eritrean refugees have taken advantage of this new policy, it is only open to individuals who can show they have the necessary means to financially support themselves. Furthermore, current estimates suggest Ethiopia has a combined refugee and asylum seeker population of over 700,000 (RMMS, Ethiopia, 2016).

¹⁰² In 2011, Sudan deported more than 300 Eritreans to Eritrea without access to asylum procedures. This was repeated in 2014, with the deportation of 104 Eritreans without allowing them access to UNHCR or asylum procedures (HRW, 2016a).

¹⁰³ See *Case of Sufi & Elmi v. United Kingdom* regarding the conditions in Dadaab refugee camp in Kenya.

a universal right.¹⁰⁴ As a result, for the purpose of this paper, these approaches will be considered as (a) Clear Freedom of Movement Restrictions.

iii) De Facto Restrictions

This study found some states that do not have legislation or public policies that restrict freedom of movement, nevertheless have de facto policies through their overall treatment of refugees in their territory. For example, while a refugee officially may be allowed to live in an urban area, he or she is not permitted to work and given no assistance by the state or international agencies. Alternatively, they can 'choose' to live in camps, which offer free education, health services and aid.

Burundi has reservations in relation to Article 17 (the right to employment), Article 22 (public education) and Article 26 of the 1951 Convention, while the 2008 Law on Asylum and Protection of Refugees grants these rights. In reality, refugees are allowed to settle in urban areas but anyone living outside a camp is expected to be self-sufficient (UNHCR, 2012 – UPR/Burundi). This therefore adds significant limits to freedom of choice for newly regularised refugees, with regards to choices of residence.¹⁰⁵ A similar situation occurs in parts of Ethiopia, where a government ruling allows Eritrean refugees the freedom to live outside refugee camps, provided they can support themselves (UK Home Office, 2012).¹⁰⁶

The findings also show that restrictions on freedom of movement are commonly linked to a restriction on the right to employment (Article 17 of the Convention). Five states in the sample have reservations on Article 17 and as can be seen by Appendix 1 – Table 9, a further eleven states have substantial barriers set up to restrict a refugee's ability to find work, from charging refugees for work permits and only allowing certain professionals to work (as is the case in Zimbabwe), to making it practically impossible to gain the correct documentation. For example, in Tunisia refugees need formal documentation to work, which is difficult to obtain, as there is no national refugee law and consequently even if refugees are recognised by UNHCR, they do not have automatic access to documentation (UNHCR, 2011 –UPR/Tunisia).

In situations where refugees are permitted to live outside of camps but are not allowed to work or there are severe restrictions on this right, such as high costs for work permits (as in the case of Kenya), this can create a de facto restriction on freedom of movement. In this situation a refugee has the 'choice' between living in a camp and receiving aid¹⁰⁷ from international organisations, or leaving and fending for themselves without the ability to legally work. These types of de facto restrictions are not limited to the sample but prevalent elsewhere on the continent, for example where settlements for refugees are set up in Uganda. These restrictions or blanket refusal to allow refugees the right to work have been highlighted by many as short-sighted.¹⁰⁸ As Betts (2009, p.16) notes, a 2005 UNHCR-sponsored study which focused on the onward movement of Somali refugees to European destinations found that a significant number did so because of 'poor quality protection, limited livelihood opportunities, limited freedom of movement, and the limited access to durable solutions such as local integration.' The policies prevent refugees contributing to development in the local area and state building (Loescher and Milner, 2008); and fostering ideas of economic security and self-reliance within refugee communities (Jamal, 2002). Finally, a lack of access to employment market also increases the chances of vulnerable refugees becoming exploited (Ferris, 2008).

¹⁰⁴ An equivalent example is the Moyo settlement in Uganda. Here, refugees' freedom of movement are not only restricted due to bureaucratic restrictions but also by the fact they do not have the resources necessary to travel large distances to neighbouring areas and markets (Dryden-Peterson and Hovil, 2003).

¹⁰⁵ While conditions in Burundi appear to be improving, conflicting reports on the treatment of refugees in camps remain. In 2009, USCRI reported that conditions were strict, with refugees needing to return to the camp each day by 6pm and permission being granted only for emergency situations (USCRI, 2009 – Burundi). UNHCR in their UPR submission on Burundi in 2012 made no reference to these conditions (UNHCR, 2012 –UPR/Burundi).

¹⁰⁶ See FN 106.

¹⁰⁷ When refugees are not permitted to work, this restriction can result in a dependency on food aid (Deardorff, 2009).

¹⁰⁸ See Asylum Access (2014) and Betts and Collier (2015).

- The role of UNHCR in de facto restrictions

Chapter 1 showed that UNHCR has a long history of using care and maintenance programmes in camps in Africa, which has at times reduced or substituted the role of states in the protection of refugees within their borders and prolonged the length of time refugees are confined within camps. This study goes further and suggests that through these programmes, UNHCR are assisting in creating de facto restrictions. By only making programmes available in camps UNHCR are creating impossible choices for refugees, who may wish to be self-sufficient, but for whom, without initial assistance from the host government or the international community, will find living in urban settings unsustainable. For example in Chad, services relating to health, education and aid are all run through the camps, and little attention is given to urban refugees (USCRI, 2009 – Chad). Similar situations occur in Burundi (USCRI, 2009 – Burundi) and Liberia (USCRI, 2009 – Liberia).¹⁰⁹ Further work on the local and national level is needed to ascertain whether these types of policy decisions are being solely dictated by host states (i.e. UNHCR's continued presence on the territory is dependent on only providing services in camps) or whether it is a capacity and strategic approach on the part of UNHCR.¹¹⁰

These continued UNHCR policies relating to long-term encampment highlight the disparity between the concept of protection, as viewed by the international community and many refugees in Africa (Crisp and Kiragu, 2010). Crisp and Kiragu note the recent trend of movement of refugees from the Horn of Africa and the Great Lakes Region who pass through Malawi, Mozambique and other states in an attempt to make it to South Africa. Refugees have little interest in UNHCR's traditional response to protection that of housing refugees in camps and giving humanitarian assistance close to the country of origin (in the hope of aiding with self-repatriation in the future). As Malawi and Mozambique have restrictions on Article 17 (the right to wage-earning employment) and Article 26, refugees are opting to migrate through these states in a bid to reach South Africa, where they believe they can find work or start a business.¹¹¹

UNHCR policy is however starting to shift. With the introduction of the 2009 Urban Policy it is clear that UNHCR are starting to push harder for durable solutions such as local integration, focus on the benefits of mobility and therefore move away from the care and maintenance policies of the past. This study found evidence of UNHCR actively advocating for local integration initiatives in at least eight of the states¹¹² or pressuring the state in official reports or the UPR process.¹¹³ For example in Guinea in 2012, UNHCR assisted with the local assimilation of thousands of Liberians, through microfinance loans and the purchasing of land (US DS, 2012 – Guinea). In the Central African Republic, a country with a history of severe restrictions on freedom of movement, UNHCR are currently working with the Government to integrate many refugees from Sudan and Chad into urban settings (UNHCR, 2013 – CAR).

While UNHCR has acknowledged mistakes of the past in relation to camp policies and how these can restrict rights such as freedom of movement, more work is needed in protecting and

¹⁰⁹ In a similar vein, Schmidt (2014) while investigating the implementation of the refugee regime at the local and national level, examined prima facie refugee status determination procedures in Uganda and Tanzania. She noted that refugee status was given on the condition of living in a particular location (i.e. a camp or settlement). Meaning, refugees who left the camps or settlements in those countries 'were almost completely outside the formal normative scope of the regime' (p.262).

¹¹⁰ This appears to run in contrary to UNHCR's 2009 Urban Policy and 2014 Alternative to Camps policy. In situations however where states impose blanket closed camps policies for all refugees, it is hard to see how UNHCR can effectively and efficiently assist 'illegal' refugees apart from advocating the host state for their rights to be fully recognised.

¹¹¹ In relation to these irregular migration movements through East Africa, RMMS (2016c and 2016f) estimate that 6,000 Somalis per year travel through Kenya, Tanzania and Mozambique each year to reach South Africa. While in 2009 alone, 10,000 Ethiopians travelled the same route.

¹¹² See Appendix 1 –Table 10 for a breakdown of this evidence.

¹¹³ For example, see (UNHCR, 2011-UPR/Uganda) for UNHCR's comments about Uganda's lack of engagement with local integration.

promoting refugees' rights in African states.¹¹⁴ For example when refugee status is granted by UNHCR on the condition of living in a camp, the consequence for refugees who decide to adopt mobility policies and live in urban or rural areas outside the camps can be severe: they find themselves for all intents and purposes existing entirely outside the scope of the international refugee regime.¹¹⁵

- Discussion point on de facto restrictions on freedom of movement in Africa

Is it possible that states in the developing world are simply using a form of mimicry by copying western approaches to refugees' freedom of movement?¹¹⁶ Put another way, are these types of de facto restrictions on movement not limited to the sample but in fact prevalent elsewhere in the continent and further afield. It is suggested that through restrictions on the ability to work and assistance with health and education, states in Europe and the Americas may be involved in similar types of de facto restriction on freedom of movement.¹¹⁷ For example, it is common practice in resettlement cases in Europe for access to services and support to be solely linked to the city or area where refugees are sent, reducing the likelihood of secondary movements within the country or region. This will be discussed further in the following sections.

5.2 African States' Approaches to Freedom of Movement of Refugees within the Framework of International Law

This section will analyse states' approaches through national legislation¹¹⁸ and policies to the freedom of movement of refugees within the international human rights and refugee framework. The analysis will build on the research discussed in Chapters 1, 2 and 3 and the initial findings and categories of freedom of movement restrictions set out in the previous sub-section (focusing mainly on full restrictions and de facto restrictions). This will then lead into some initial conclusions surrounding a potentially new emerging form of regionalism, to be discussed in section 5.3.

5.2.1 '...lawfully in its territory...'

There is debate over the meaning of '...lawfully in its territory' in Article 26 of the 1951 Convention. Hathaway (2005) believes refugees are entitled to rely on the right to freedom of movement and choice of residence as soon as they are 'regularised'. Using this understanding, 'lawfully in' would begin as soon as an application to the state or UNHCR run refugee status determination (RSD) process¹¹⁹ has been made, meaning it is not dependent on the recognition of refugee status. Furthermore, any express or implied authorisation to remain in the state would also qualify a refugee as 'regularised' (Hathaway, 2005). Marx (2011) suggests that by the very nature of being a refugee and following the spirit of the 1951 Convention, a refugee only needs to be in the territory to be lawfully there. Goodwin-Gill and McAdam (2011) suggest that national legislation of the state will determine when a refugee is lawfully in the territory. From Appendix 1 – Table 7 of the twenty-two states in the sample that have national refugee acts, fourteen have a specific reference to freedom of movement. Seven¹²⁰ make no reference

¹¹⁴ For example, the UNHCR emergency handbook (UNHCR, 2007) has only occasional references to freedom of movement.

¹¹⁵ See Schmidt (2014) for a discussion on this.

¹¹⁶ The author will investigate this hypothesis further, adopting the work of Pritchett, Woolcock and Andrews (2010, 2012) in relation to the concept of Isomorphic Mimicry. This refers to the situation whereby developing countries adopt the framework and formal structures of developed countries but with little functionality.

¹¹⁷ It is possible that Northern states are just simply better practiced at concealing their breaches of international law.

¹¹⁸ All relevant sections of national refugee acts, alien acts and constitutions of sample states can be found at refworld.com or upon request to the author.

¹¹⁹ RSD 'is the legal or administrative process by which governments or UNHCR determine whether a person seeking international protection is considered a refugee under international, regional or national law.' UNHCR (2016c).

¹²⁰ These are Ethiopia, Kenya, Tanzania, Ghana, Malawi, Zimbabwe and Sudan.

to a *right* to freedom of movement but instead permit restrictions on that right for all refugees (regardless of their attachment to the state). Of that seven, Ethiopia, Kenya, Tanzania and Ghana have no official reservations on Article 26¹²¹ and therefore would appear to be in breach of the 1951 Convention.

The seven that do have a clause in their refugee legislation on freedom of movement,¹²² differ in their interpretation. The majority (Rwanda, Uganda, Liberia and the DRC) appear to only grant freedom of movement to refugees once they have been recognised by the state as refugees (i.e. having completed the RSD process or been given express authority to remain). Mozambique appears to follow Hathaway's interpretation, whereby once a refugee starts the process of applying for refugee status, freedom of movement should be granted to them (save for any restrictions the state might apply to all refugees). Cameroon and the DRC use the term 'lawfully', but whereas the DRC's 2002 Refugee Act does not define this, Cameroon's 2005 Refugee Act states that a refugee has to be lawfully residing in the territory. This suggests that a refugee has to be within the third level of attachment to the state before freedom of movement is granted.

Due to the sample size (seven), it is difficult to reach conclusions for this section of the study. Clearly, amongst African states that have camp policies and who also have refugee acts and positive clauses for freedom of movement, there appears to be a broad conservative pattern of when Article 26 applies.¹²³ This pattern follows Goodwin-Gill and McAdam's (2011) interpretation of national legislation being the important factor in determining when a refugee is lawfully within a territory. Secondly, it seems safe to suggest that within Africa there is no guarantee that freedom of movement will be expressly stated in national legislation and even when it is, states do not appear to follow Marx's or Hathaway's more purposive interpretation of the act.

From a protection perspective, this appears troubling. As many African states do not have formal RSD processes,¹²⁴ this leaves refugees vulnerable to decision processes that may not be transparent or may withhold their right to freedom of movement for indefinite periods of time, while the state looks into their application. This would seem contrary to the object and purpose of the 1951 Convention and as Hathaway (2005) notes, against a state's duty to implement treaty obligations in good faith.¹²⁵ With a focus on national legislation, which appears to ignore the 1951 Convention's different levels of attachment to the state that grant refugees different rights, it is suggested that refugees in African states are commonly in a position where they are lawfully in the territory under international law but illegally present under national legislation.¹²⁶

5.2.2 Are States Breaching International Refugee Law?

This section will focus on the ten states from the sample that have articles in their refugee acts that allow for restrictions on freedom of movement and choice of residence (see Appendix 1 –

¹²¹ A reservation means a state is excluding the legal effect of the relevant article. This has to be done at the time of signing the international treaty.

¹²² Some of the drafting of national refugee legislation creates confusion, especially as some do not have a definition clause. For example in the 2008 Refugee Act of Burundi and the DRC 2002 Refugee Act terms such as 'lawfully in' and 'recognised refugees' do not appear to be defined. In the case of the DRC, this study took a holistic approach by inferring the meaning of 'recognised refugee' by analysing the whole Act.

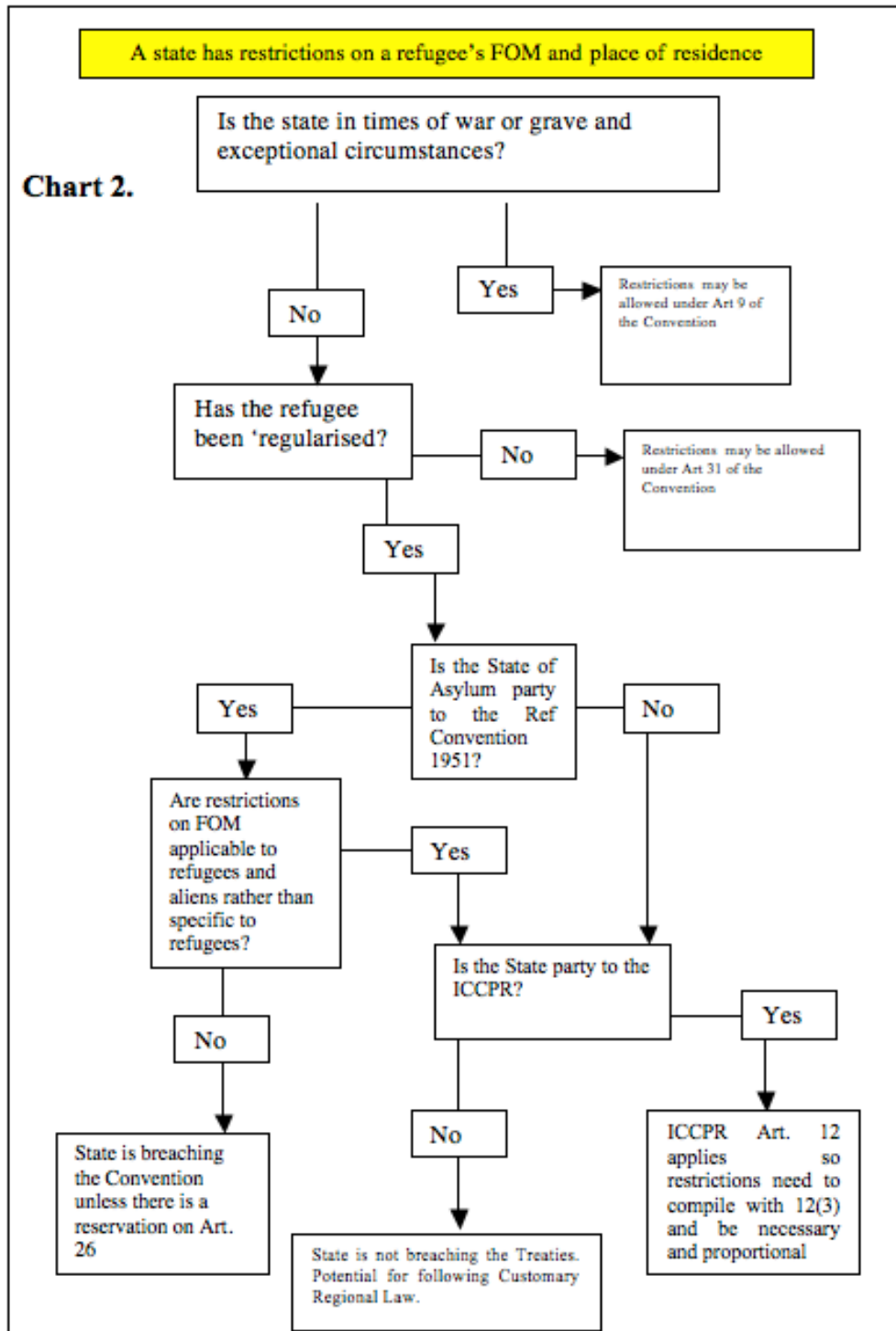
¹²³ Note, all relevant refugee acts were drafted and signed after the individual states signed the 1951 Convention.

¹²⁴ For example Chad, where there is no formal refugee law for granting refugee status.

¹²⁵ Article 26 (*Pacta sunt servanda*) of the VCLT (1969).

¹²⁶ As suggested by Grahl-Madsen (1997). It is also suggested that this practice of deciding when a refugee or asylum seeker is lawfully in the territory of the host state through national legislation, which avoids a purposive reading of the 1951 Convention, is widespread across Europe and the Americas as well; however, more research is needed before a conclusion can be reached.

Table 7).¹²⁷ Once a refugee has been 'regularised' following Marx (2011), Hathaway (2005) or Edwards' (2011b) reading of Article 26, a state may not impose refugee specific restrictions on their freedom of movement or choice of residence (see the first section of Chart 2 below).¹²⁸ Therefore any restrictions on freedom of movement would need to be applicable to all aliens generally for them to be permissible under the 1951 Convention.



¹²⁷ The study found various states that have general policies that restrict freedom of movement (such as Algeria, Botswana and Chad) and others that have de facto restrictions. However, as these policies are not publicly available, it is hard to reach conclusions relating to issues discussed in this chapter.

¹²⁸ A reservation on Article 26 by the state would of course make this point moot.

As Goodwin-Gill and McAdam (2011) suggest state practice reveals a different picture. Appendix 1 - Table 5 shows that of the ten states that have articles in their national refugee legislation that permit restrictions on freedom of movement and choice of residence, six appear to actively enforce these restrictions.¹²⁹ It is also apparent from Appendix 1- Table 5 that with the exception of Zimbabwe, these states do not appear to have corresponding laws on aliens in general. State behaviour therefore seems to show that African states see no issue in drafting refugee-specific restrictions on freedom of movement into national legislation. With states in the past (Schmidt, 2003) using Article 2(6) from the OAU Refugee Convention as legal justification for encampment policies, coupled with the perceived breach of Article 26, it is suggested that this behaviour by states might amount to the start of a regional custom in relation to freedom of movement of refugees. This will be discussed further in section 5.2.4 as well as the potential effect this has on international refugee law.

The reservations made by some states on Article 26 appear to suggest that states are at least aware of their international obligations under Article 26. The majority (as can be seen by Appendix 1 – Table 4) state they are permitted to restrict refugees' movements and choice of residence for reasons of national security issues and public order. This suggests an attempt to move restrictions on rights set out in Article 26 of the 1951 Convention in line with Article 12 of the ICCPR, by simply removing the issue of 'refugee specific restrictions' and instead focusing on the reason for the restriction, rather than the subject of the restriction. This argument would support Hathaway (2005) and others' interpretation of this section of Article 26, however it does not fully explain other states' apparent willingness to ignore this section of the Article.

The other four states with articles in their national refugee legislation that permit restrictions on freedom of movement and choice of residence do not appear to invoke these restrictions overtly.¹³⁰ While this causes issues of legal incompatibility, the states would need to implement these articles before any breach of the right actually occurred. Additionally, the legislation itself supports the suggestion that there is a general regional pattern in the response to Article 26, regardless of whether it is or is not applied.

Furthermore, while refugee-specific policies or practices that restrict freedom of movement are prohibited, what is less clear is the situation where there are restrictions on aliens and refugees in separate national legislation. It is assumed that if the restrictions are generally similar in theme then the refugee restriction would be valid, however this is an area that requires more research.¹³¹ For example the 1998 Immigration Act of Tanzania has some general references to restrictions on the freedom of movement of aliens, however by comparison, the 1998 Tanzania Refugee Act (Art.16 and 17) is very specific in the restrictions they can apply to refugees' movement and choice of residence. In these situations, it is suggested that unless the state could show that other aliens are subject to the same restrictions as refugees, then the state would still be breaching Article 26.

Finally, in periods of mass influx and emergency, states are permitted to restrict refugees' and asylum seekers movements to varying degrees under Article 9 and Article 31 of the Convention. While there has been debate over how long an emergency phase could last (see Chapter 1), analysis of national legislation shows that states in Africa with camps do not appear to distinguish between refugees who have just arrived and those who have been 'regularised' when it comes to restrictions on freedom of movement. Secondly, none of the restrictions reviewed appear to relate or refer to emergency phases or periods of mass influx.¹³² It is therefore suggested that African states' practice does not apply the clear distinctions between how freedom of movement can be restricted under the conditions set out in Article 9 and Article

¹²⁹ These are Ethiopia, Kenya, Malawi, Tanzania, Sudan and Zimbabwe.

¹³⁰ Of these four states, (Uganda, Burundi, Ghana and Liberia) only Uganda appears to make reference to the fact that restrictions on refugees should also apply to aliens generally (Art. 30(2) of the 2006 Refugee Act).

¹³¹ Also see Chiasson (2015).

¹³² State behaviour, such as long-term encampment policies of Kenya, Tanzania and Malawi support this notion that states do not appear to try and justify encampment policies by arguing that they are dealing with periods of emergency.

31 and those in Article 26 that academics and practitioners do. This particular area of state behaviour in relation to freedom of movement warrants further discussion and research.¹³³

5.2.3 Are States Breaching International Human Rights Law?

Botswana is the only state in the sample that has a reservation on Article 12 of the ICCPR, therefore states in Africa with forms of encampment policy need to comply with Article 12(3)'s exceptions¹³⁴ for justifiable restrictions on freedom of movement. The restrictions would also need to be necessary in all circumstances, subject to a test of proportionality and the burden of proof rests with the state to justify the restrictions (Edwards, 2011).

As will be seen below, it is difficult to say categorically whether states are breaching Article 12 without an in-depth assessment of each individual state's behaviour and policies, however the current study does highlight some key themes that can be seen from the sample. The first part of Article 12(3) states that any restrictions must be provided by law. As discussed above, six states from the sample appear to be actively enforcing restrictions in national refugee legislation on freedom of movement. From Appendix 1 – Table 10, these states have similar wording, which focuses on the need to give notice for any restrictions and designated areas of residence for refugees. There is however no mention of justification for such restrictions in any of the legislation. The Human Rights Committee has noted that '[t]he law itself has to establish the conditions under which the rights may be limited.' (HRC General Comment No. 27, 1999, para.12). It is suggested that a reasonable reading of this would imply that legislation that is not precise with regards to under which conditions freedom of movement will be restricted (such as public order or national security) would not meet the requirements under Article 12(3). Furthermore, governments that have long-term encampment policies with restrictions on freedom of movement, but do not have national legislation permitting such policies appear to fall foul of Article 12(3).¹³⁵ As Nowak (2005 as cited in Hathaway (2005)) notes, '[m]ere administrative provisions are insufficient...[unless they] follow from the enforcement of a law that provides for such interference with adequate certainty.'

Article 12(3) also states that any restriction must be necessary to serve one of the listed permissible exceptions. Unfortunately due to the broadness of restrictions in the legislation reviewed and a lack of publicly available policy decisions relating to the encampment of refugees, it is hard to comment on African states' responses to these issues through official documentation. Research discussed in Chapter 1 shows that in general African states use the issue of national security and public order as justification for refugee camps. It is argued however that long term closed encampment or severe restrictions on freedom of movement of refugees can never be the 'least intrusive'¹³⁶ method of achieving the objective (national security for example), or pass an *objective minimum standard* test which demonstrates that the restrictions fulfil the test of necessity, when you consider alternatives such as open settlements and local integration.

- States with de facto restrictions on freedom of movement

By creating little opportunity to live outside camps, restricting aid and education to within the borders of camps and in some circumstances creating insurmountable boundaries to gain a wage or making it illegal for refugees to work, it is suggested that certain refugee policies in Africa, at times with the assistance of UNHCR, are breaching international law by de facto

¹³³For example, it is suggested that the imprecise way the regime has responded to mass influxes (lack of a definition for mass influxes; lack of any treaty or policy norms; and the lack of clarity as to when emergency phases should end) has allowed states to mould the regime into preconceived national interests. See Schmidt (2014) and Betts and Orchard (2014).

¹³⁴ National security, public order, public health or morals, and the rights and freedoms of others.

¹³⁵ See Appendix 1 – Table 2, from the information available these countries include: Mozambique, Ghana, Benin, Algeria and Botswana.

¹³⁶ Restrictions must be the 'least intrusive' way of achieving the stated objective (HRC, General Comment No. 27, 1999, para. 14).

restrictions on freedom of movement.¹³⁷ This suggests that countries such as Togo, CAR and Guinea, that appear to have these types of de facto restriction would, it is argued, need to show that the combination of policies (education and aid¹³⁸ only being available in camps and restrictions on employment opportunities) were necessary and proportional under Article 12 of the ICCPR as they appear to amount to a restriction on freedom of movement. Denying they specifically restrict freedom of movement is not sufficient if policies create an environment where refugees have little choice but to reside in camps. Furthermore, these de facto restrictions could also be breaching national legislation if freedom of movement for refugees or the rights under the 1951 Convention are guaranteed in national refugee acts.

The final section of 12(3) states that any restrictions need to be consistent with other rights under the ICCPR. While many states' constitutions only grant freedom of movement specifically to citizens, others such as Ethiopia, Cameroon, Chad and DRC grant the right to all persons legally in their territory. Therefore states that provide for freedom of movement for all persons in their territory but impose de facto restrictions specifically on refugees could also be breaching Article 26¹³⁹ and Article 2 of the ICCPR through discriminatory policies relating to refugees.

5.3 Regionalism: A New Regional Customary Law?

The findings above show a general theme amongst African states with camp policies of viewing the right to freedom of movement of refugees contained within the 1951 Convention and the ICCPR as a right that either (a) allows for very broad restrictions or (b) can be breached. Both readings of this approach would appear to be contrary to the general academic opinion on this fundamental right. While Goodwin-Gill and McAdam (2011) put great emphasis on state practice shaping this right and believe states are permitted to prescribe conditions of asylum within their territory, authors such as Hathaway (2005), Marx (2011) and Edwards (2011a) all stress the importance of following the 'object and purpose' of the relevant articles in the 1951 Convention and furthermore, the importance of the right as set out in the ICCPR and supported by recent Human Rights Committee commentaries.

One possible interpretation of these findings is that a regional customary law is emerging which potentially violates international human rights and refugee law. While the sample is relatively small in comparison to the whole region, since the countries analysed apply the most serious restrictions on freedom of movement (i.e. states with encampment policies) the study is conforming to the doctrine that in order to determine whether a rule of law is emerging you need to examine the views and practice of 'specifically affected countries' (Charney, 1985). Further evidence to support this new form of regionalism with its move away from internationally recognised norms is states' apparent focus on regional instruments rather than international ones. For example, many states such as Zimbabwe, Malawi and Mozambique, use the OAU Refugee Convention definition of refugees in their national legislation and states with camps generally use Article 2(6) of the OAU Refugee Convention as justification for refugee camps.

¹⁴⁰

Legally speaking, is it possible to have a regional customary law, based on state practice that breaches an international norm? While academics including Goodwin-Gill and McAdam (2011) suggest Art. 31(3)(b) of the VCLT allows for state practice to assist in the interpretation of treaty provisions, as Hathaway (2005, p.68) notes this provision does not validate all state practice '...as part of the general rule of interpretation' and that any practice needs to be '...motivated by a sense of legal obligation (*opinio juris*).' Therefore the overall object and purpose of a treaty should not be eroded by state practice.

¹³⁷ This suggestion would be harder to substantiate if restrictions are not in national legislation or official government policy but rather ad hoc local or national government policy.

¹³⁸ Whether refugees have a right to aid regardless of where they choose to reside is a complex issue, which needs further research.

¹³⁹ Article 26 states that all persons are equal before the law and are entitled to protection without discrimination.

¹⁴⁰ Which as discussed previously goes against academics such as Sharpe (2012) reading of the OAU Refugee Convention.

A possible defence to these breaches of international law would be to claim *force majeure* under Article 23 of the Articles on Responsibility of States for Internationally Wrongful Acts (2001)¹⁴¹ as a defence for a wrongful act that breaches international treaties. However, excluding times of war, mass influx of refugees would need to be of an extreme nature to make it “materially impossible in the circumstances [for a state] to perform the obligation.”¹⁴² Therefore it is unlikely to be applicable to long-term encampment policies once periods of emergency have passed.

¹⁴¹ International Law Commission.

¹⁴² Any use of this defence would need official notification to other states and a public proclamation of a national emergency (Alston and Goodman, 2012).

6 Conclusions

The deterioration or constraining of fundamental rights contained within the international refugee regime has become an urgent and growing concern. In recent years, attention has predominately been focused on the North, with developed states becoming more and more concerned with flows of refugees arriving at their doorsteps. Yet, over the same period, the situation for refugees in the South has not improved or even stabilised. In fact, with old conflicts persisting, new conflicts emerging¹⁴³ and states such as Kenya demanding the closure of vast refugee camps,¹⁴⁴ the refugee crisis in Africa is far worse than anything currently seen in the North. This paper set out to investigate how states in Africa are constraining or altering one of the refugee regimes' fundamental rights; freedom of movement. While it is hoped studies of this kind will help shift some focus back to the continent, it also has relevance to the North, specifically in relation to the on-going 'crisis' in Europe. With refugee camps being sent up in Greece and the chances of a swift solution looking remote, there is a very real chance of protracted camp situations becoming a norm in Europe over the next decade. How Northern states respond to refugees' fundamental rights, such as freedom of movement will be of keen interest to academics and practitioners alike.

The aim of this paper was to investigate how states with the severest restrictions on the freedom of movement of refugees in Africa implement these restrictions within the international legal framework. This was achieved through a thematic look at the national legislation and government policy relating to refugees of African states who have refugee camps. The role of UNHCR in maintaining these camps and the continued restrictions on freedom of movement was also discussed. As detailed in the Introduction, while research on why states restrict the movement of refugees through encampment policies has been extensive, there has been a gap in the literature as to how states achieve this within the confines of their international treaty obligations. By adopting this approach, broad themes have emerged in relation to: state behaviour with regards to freedom of movement articles in the 1951 Convention and the ICCPR; de facto restrictions on refugees' freedom of movement through the 'assistance' of UNHCR in states that have not traditionally been as severe as others with their encampment policies; and the potential emergence of a new regional customary law in relation to restrictions on refugees' movements on the African continent.

Chapter 1 focused on the existing analysis and interpretation of international law in relation to a refugee's right to freedom of movement, discussing the points of contention between academics in reference to Article 26 of the 1951 Convention and Article 12 of the ICCPR. Broadly speaking it was found that interpretations over Article 26 are split between scholars who give weight to the 'object and the purpose' of the 1951 Convention when interpreting the right, and others such as Goodwin-Gill and McAdam (2011) who suggest state practice and national legislation are the deciding factors. Similar discussions have occurred over Article 12 of the ICCPR and it is hoped this paper can add to this debate through an investigation into national policies and state behaviour.

The paper then proceeded to discuss camps and refugee movement in the African context. Since the 1960s, the region has been witness to factors that have seen large numbers of displacement: the end of colonisation, the emergence and continued proliferation of civil wars and unrest, economic stagnation and environmental disaster such as famine and droughts. In addition to these issues, Northern states willingness to assist with these concerns appears to be at least in part motivated by a desire to see movement and displacement kept within the region.¹⁴⁵ It was shown that there are a variety of reasons, many valid, for setting up camps

¹⁴³ For example the current crisis in Burundi, where over 260,000 refugees have fled to neighbouring states within a year of the conflict starting. Many are now being housed in overcrowded camps (Buchanan, 2016).

¹⁴⁴ For example the Dadaab complex (the world's largest refugee camp), which hosts over 350,000 Somali refugees. See Crisp (2016).

¹⁴⁵ For example the new EC Emergency Trust Fund (the €1.8 fund set up in 2015 to aid stability and address root causes of irregular migration and displaced persons in Africa) makes clear a goal of the

for mass influxes of refugees for example, security reasons, rights of local communities and economic and geopolitical issues. Once a refugee situation moves past the emergency phase however and into a protracted situation then reasons for sustaining camps and restricting the rights of refugees living there appear to diminish. It was also suggested that previous research often placed a focus on the role of UNHCR in encampment policy to a degree where state responsibility appeared to be excused. An aim of the paper was to highlight the key role of states and thereby assist with moving the debate back to the primary bearer of responsibility under international law. Finally new policies by UNHCR, which suggest a move away from the 'care and maintenance' model of the past, were also discussed. Yet as noted above, for all the academic work and proposals of new regime policy norms¹⁴⁶ pointing to urban and rural integration as a suitable alternative, no normative shift in refugee reception policies has occurred (Zetter, 2015); states continue to deploy long-term encampment policies.¹⁴⁷

The findings (as set out in Chapter 5) were analysed with reference to the overall aims of the study as outlined in the Introduction and the previous work in this area as discussed in Chapter 1. It was found that states in Africa with camp policies appear to fall into three different categories when considering restrictions on freedom of movement of refugees. There are states that restrict the movement of refugees in their territory by choosing their place of residence (usually camps) and restrict when a refugee can leave the camp and for how long. These restrictions can be either expressly authorised in legislation or through government policy. A second smaller group of states restrict choice of residence but generally permit refugees to travel and work outside of camps. Finally, the study found a third group that appear to have de facto policies of restricting freedom of movement, which can occur even when states permit freedom of movement in national legislation. It was found through government and UNHCR policies, such as restricting refugees right to work and giving no access to aid, health and education outside of camps, which refugees have very little choice but to reside in camps permanently, hence there being a de facto restriction on their right to freedom of movement.

It was also suggested that by reading these policies and the national legislation of states through an 'object and purpose' lens of the 1951 Convention and ICCPR, one can conclude that a considerable number of African states are currently breaching both international treaties. Alternatively, by placing more emphasis on national legislation and state practice in interpreting international law then there is a clear pattern of state practice that suggests that either the region as a whole is interpreting the relevant articles in an extremely broad manner, or that a regional custom is starting to emerge in the face of international law. This was supported by states' apparent reliance on regional instruments such as the OAU Refugee Convention over international instruments. It was hypothesised that this apparent collective regional behaviour could simply be addressing a 'common problem': states see the mutual benefit (e.g. regional stability) in cooperating with each other through the containment of refugees. While this needs further research, this regional behaviour has undoubtedly filled a normative and legal void, created by a lack of understanding and research on the object and purpose of regional instruments, in particular the OAU Refugee Convention. To conclude, the broad patterns discussed in this paper point to the potential of a regional collective interpretation of a refugee's right to freedom of movement, which appears at odds with the right set out in international law. Whether this amounts to the start of an emerging regional customary law is something that needs further investigation through individual studies of state practice.¹⁴⁸ At a minimum however, this new form of regionalism suggests an attempt by states to recast refugee regime norms (such as freedom of movement) regardless of the fact they breach international law.¹⁴⁹

project is to improve migration management, 'including containing and preventing irregular migration..' See EC (2015).

¹⁴⁶ UNHCR's 2009 Urban Policy, makes clear a preference for urban integration over camps (UNHCR, 2009). Also see Jacobsen (2001); UNHCR (2013); and Aleinikoff (2015).

¹⁴⁷ Camp policies in the case of East Africa are actually proliferating (Kibreab 2014).

¹⁴⁸ The study also highlighted the need for thorough independent reporting on the rights of refugees in camps across the region, as information publicly available on camp policies and the rights afforded to refugees in the camps is sparse.

¹⁴⁹ See Schmidt (2008 and 2014) for a discussion on the recasting of regime norms by state practice.

While there are understandable reasons in times of emergency as to why states in Africa and UNHCR utilise encampment policies, there has for too long been a broad acceptance that freedom of movement of refugees is a right that can be breached or severely restricted. Through highlighting how states in Africa restrict this fundamental right, it is hoped that this study will generate new research into the consequences of these actions and at the same time push the international community and states to uphold international legal obligations and renew their focus on alternatives such as local integration.

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Appendix 1: Table 1 to Table 3. Table 1. A Breakdown of Countries with Modern* Refugee Acts

COUNTRIES WITH MODERN* REFUGEE ACTS					
i. Countries with:			ii. Countries with:	iii. Countries with:	iv. Countries with:
<ul style="list-style-type: none"> R/A created after R-RC and R-ICCPR; and FOM Restrictions in Act 			<ul style="list-style-type: none"> R/A created after R-RC and R-ICCPR; No FOM Restrictions in Act; and Policy Restrictions 	<ul style="list-style-type: none"> R/A created after R-RC and R-ICCPR; No FOM Restrictions; and No Policy Restrictions 	<ul style="list-style-type: none"> R/A created after R-RC and R-ICCPR; No FOM Restrictions; No Policy Restrictions; and Implied Restrictions
Restrictions Used	Restrictions Not Invoked	Restrictions Not Invoked; and Implied Restrictions			
Ethiopia Kenya ¹ Malawi ●⊕ Tanzania Sudan ●⊕	Uganda ⌘	Burundi ● Ghana ◆○⊕ Liberia ◆⊕○	Mozambique ●⊕◆ Rwanda ●○ Benin ◆		Cameroon Central African Repub. 📖 D. R. Congo Guinea ◆ Nigeria ◆ Togo ◆

***Modern** – Refugee Acts signed after the state put a signature to the Convention and ICCPR

KEY			
R/A	Refugee Act	⊕	ICCPR signed after R/A
R-RC	Ratified Ref Convention 1951	📖	R/A not on RefWorld
R-ICCPR	Ratified ICCPR	◆	Residential Restrictions
◆	Right to Work	○	Alien Law allows for Restriction
●	Reservation on RC	⌘	Debate over Camps

¹ Debatable whether Kenya has restrictions. See Appendix 1 for a discussion.

Table 2. A Breakdown of Countries with Old* Refugee Acts

COUNTRIES WITH OLD* REFUGEE ACTS			
i. Countries with: <ul style="list-style-type: none"> • R/A created before R-RC and R-ICCPR; and • FOM Restrictions in Act 	ii. Countries with: <ul style="list-style-type: none"> • R/A created before R-RC and R-ICCPR; • No FOM Restrictions in Act; and • Policy Restrictions 	iii. Countries with: <ul style="list-style-type: none"> • R/A created before R-RC and R-ICCPR; • No FOM Restrictions; and • No Policy Restrictions 	iv. Countries with: <ul style="list-style-type: none"> • R/A created after R-RC and R-ICCPR; • No FOM Restrictions; • No Policy Restrictions; and • Implied Restrictions
Zimbabwe ●	Algeria Botswana ●		Djibouti ◆

*Old – Refugee Acts signed before the state put a signature to the Convention and ICCPR

KEY	
R/A	Refugee Act
R-RC	Ratified Ref Convention 1951
R-ICCPR	Ratified ICCPR
◆	Right to Work
●	Reservation on RC
⊕	ICCPR signed after R/A
📖	R/A not on RefWorld
❖	Residential Restrictions
○	Alien Law allows for Restriction
⌘	Debate over Camps

Table 3. A Breakdown of Countries with No Refugee Acts

COUNTRIES WITH NO REFUGEE ACTS		
i. Countries with: <ul style="list-style-type: none"> • R-RC and R-ICCPR; and • Policy Restrictions 	ii. Countries with: <ul style="list-style-type: none"> • R-RC and R-ICCPR; and • Implied Restrictions 	iii. Countries with: <ul style="list-style-type: none"> • R-RC and R-ICCPR; and • No Restrictions
Chad	Tunisia	Cote I'voire

KEY	
R/A	Refugee Act
R-RC	Ratified Ref Convention 1951
R-ICCPR	Ratified ICCPR
◆	Right to Work
●	Reservation on RC
♻️	ICCPR signed after R/A
📖	R/A not on RefWorld
❖	Residential Restrictions
○	Alien Law allows for Restriction
⌘	Debate over Camps

Appendix 1: Table 4: Reservations to the Refugee Convention 1951 and the International Covenant on Civil and Political Rights 1966

	Country with Refugee Camps	FOM Restrictions in National Refugee Law	Reservations on Article 26	Type of Reservation	Reservation on Art 12 of ICCPR
1.	Burundi	Yes	3. The provisions of article 26 are accepted only subject to the reservation that refugees: (a) Do not choose their place of residence in a region bordering on their country of origin; (b) Refrain, in any event, when exercising their right to move freely, from any activity or incursion of a subversive nature with respect to the country of which they are nationals.	Residential	No
2.	Djibouti				No
3.	Eritrea				No
4.	Ethiopia	Yes			No
5.	Kenya	Yes			No
6.	Malawi	Yes	“The Government of the Republic of Malawi reserves its right to designate the place or places of residence of the refugees and to restrict their movements whenever considerations of national security or public order so require.”	Residential and FOM restrictions in consideration of national security or public order	No
7.	Mozambique		“The Government of Mozambique reserves its right	Residential	No

			to designate place or places for principal residence for refugees or to restrict their freedom of movement whenever considerations of national security make it advisable.”	and FOM restrictions in consideration of national security	
8.	Rwanda		For reasons of public policy (<i>ordre public</i>), the Rwandese Republic reserves the right to determine the place of residence of refugees and to establish limits to their freedom of movement.	Residential and FOM restrictions in consideration of public order	No
9.	South Sudan				No
10.	Uganda	Yes			No
11.	United Republic of Tanzania	Yes			No
12.	Zimbabwe	Yes	The Government of the Republic of Zimbabwe wishes to state with regard to article 26 that it reserves the right to designate a place or places of residence for refugees.	Residential	No
13.	Cameroon				No
14.	Central African Republic				No
15.	Chad				No
16.	Democratic Republic of Congo				No
17.	Algeria				No
18.	Sudan	Yes	<i>With reservation as to article 26.</i>	Blanket restriction	No
19.	Tunisia				No

20.	Botswana		Subject to the reservation of articles 7, 17, 26, 31, 32 and 34 and paragraph 1 of article 12 of the Convention.	Blanket Restriction	b) Article 12 paragraph 3 of the Covenant to the extent that the provisions are compatible with Section 14 of the Constitution of the Republic of Botswana relating to the imposition of restrictions reasonably required in certain exceptional instances.”
21.	Benin				No
22.	Cote d'Ivoire				No
23.	Ghana	Yes			No
24.	Guinea				No
25.	Liberia	Yes			No
26.	Nigeria				No
27.	Togo				No

Appendix 1: Table 5. Countries with Long Term Encampment Policies and FOM Restrictions in National Legislation

		LTE	FOM Restriction in National Law	Restriction on Art 26	Similar Alien Act FOM Restriction Provision	Potential Illegality of Provision
1.	Ethiopia	Yes	Refugee Proclamation 2004 Article 21 (2) Residential - designate places and areas		No	Potentially in breach of Article 26 of R/C as clause is specific to refugees Potentially in breach of ICCPR Article 12 – for lack of precise criteria
2.	Kenya	Yes	Kenya Subsidiary Legislation 2009 Article 35. Residential - designate places and areas; and FOM restrictions		Only in times of emergency – Constitution of Kenya 2010	Potentially in breach of Article 26 of R/C as clause is specific to refugees. As they continue practice of LTE cannot be classed as an emergency Potentially in breach of ICCPR Article 12 – for lack of precise criteria
3.	Malawi	Yes	Refugee Act 1989 Article 13. FOM restrictions	The Government of the Republic of Malawi reserves its right to designate the place or places of residence of the refugees and to restrict their movements whenever	No	Reservation on Art 26 Potentially in breach of ICCPR Article 12 – for lack of precise criteria Are the actions of LTE necessary and

				considerations of national security or public order so require.		proportionate?
4.	Tanzania	Yes	Refugee Act 1998 Article 17 Residential - designate places and areas; and FOM restrictions		Residential restrictions Immigration Act 1995 Vague Reference	Potentially in breach of Article 26 of R/C as clause is specific to refugees. Immigration Act is not similar to FOM restriction in Refugee Act Potentially in breach of ICCPR Article 12 – for lack of precise criteria
5.	Sudan	Yes	Refugee Act 1974 Article 10 Residential - designate places and areas		No	Reservation on Art 26 Potentially in breach of ICCPR Article 12 – for lack of precise criteria Imprisonment -HAT
6.	Zimbabwe	Yes	Refugee Act 1983 Article 12 Residential - designate places and areas	The Government of the Republic of Zimbabwe wishes to state with regard to article 26 that it reserves the right to designate a place or places of residence for refugees.	2005 Constitution allows for restriction of FOM only in certain situations	Reservation on Art 26 Potentially in breach of ICCPR Article 12 – for lack of precise criteria

Appendix 1: Table 6

Analysis of States' Approaches to "Lawfully in" under Article 26

	Country with Refugee Camps	Reference in R/A to FOM	Reservation on Article 26	Analysis
1.	Burundi	Has positive FOM clause for refugees lawfully in Burundi (Art. 74). FOM restrictions apply to all <i>Prime Facie</i> Refugees – definition in Refugee Act implies they have been regularised. (Art 82) Refugee Act 2008	Yes	2 nd level of attachment Hathaway Definition. / Breaching the convention
2.	Djibouti	No		
3.	Eritrea	No		
4.	Ethiopia	No positive FOM clause for refugees. Under the Refugee Act FOM restrictions apply to all recognised refugees and people applying for recognition. Art. 21(2) Refugee Proclamation 2004		Breaching the Convention
5.	Kenya	No positive FOM clause for refugees. FOM restrictions apply to all recognised refugees and asylum seekers. Art. 35 Kenya Subsidiary Legislation 2009		Breaching the Convention
6.	Malawi	No positive FOM clause for refugees. Under the Refugee Act FOM restrictions apply to all. No apparent distinction between asylum seekers,	Yes	

		legally entered refugees etc. Art.13. Refugee Act 1989		
7.	Mozambique	Under the Refugee Act, Provision Residence Permits are given after receipt of Asylum Application (Art. 9) Refugee Directive 1986	Yes	2nd level attachment –in line with Hathaway Definition
8.	Rwanda	Under the Refugee Act, once a refugee is recognised in Rwanda, they have FOM (Art 22) Refugee Act 2001	Yes	No distinction between rights. Have to be recognised by RSD.
9.	South Sudan	NO		
10.	Uganda	Under the Refugee Act, once a refugee is recognised in Uganda, they have FOM (Art 30 Refugee Act 2006) but many restrictions		Have to be recognised by RSD.
11.	United Republic of Tanzania	No positive FOM clause for refugees. Under the Refugee Act FOM restrictions apply to all recognised refugees and asylum seekers. (Art 17) Refugee Act 1988		Breaching the Convention
12.	Zimbabwe	No positive FOM clause for refugees. FOM restrictions apply to all recognised refugees and people applying for recognition. (Art. 12) Refugee Act 1983	Yes	
13.	Cameroon	FOM is granted to refugees who are “lawfully residing” in Cameroon. (Art. 9) Refugee Act 2005		Level 3 attachment
14.	Central African Republic	Act not publicly available		
15.	Chad	No		
16.	Democratic Republic of Congo	FOM is granted to ‘recognised’ refugees Art 32 Refugee Act 2002		Have to be recognised by RSD
17.	Algeria	No		
18.	Sudan	No positive FOM clause for refugees.	Yes	





		Under the Refugee Act FOM restrictions apply to all. No apparent distinction between asylum seekers, legally entered refugees etc. Art.10. Refugee Act 1974		
19.	Tunisia	No		
20.	Botswana	No	Yes	
21.	Benin	No		
22.	Cote d'Ivoire	No		
23.	Ghana	No positive FOM clause for refugees. FOM restrictions apply to all recognised refugees and people applying for recognition. (Art. 13) Refugee Act 1992		Breaching the Convention
24.	Guinea	No		
25.	Liberia	Slightly unclear separate section in refers to FOM for refugees and then only to recognised refugees (Art.12) Refugee Act 1993		Have to be recognised by RSD.
26.	Nigeria	No		
27.	Togo	No		

Appendix 1: Table 7**Overview of findings**

Total Sample	27
Countries signatures to Refugee Convention 1951	25
Countries with Reservations on Article 26 of the Refugee Convention 1951	7
Countries signatures to the OAU Refugee Convention	25
Countries signatures to the ICCPR	26
Countries with Refugee Acts	22
Countries with Refugee Acts that came into force after the state signed Refugee Convention and ICCPR	18
Countries with FOM restrictions in their Refugee Acts	10

Appendix 1: Table 8 Legal/Colonisation Background to Countries with Refugee National Legislation

State	Size of Refugee Population	Does the National Legislation have FOM Restrictions	Location
Burundi	41,813.00	Implied	Eastern Africa
Djibouti	19,139.00	Implied	Eastern Africa
Eritrea	3,600.00	Full FOM	Eastern Africa
Ethiopia	376,393.00	Full FOM	Eastern Africa
Kenya	564,933.00	Full FOM	Eastern Africa
Malawi	6,544.00	Full FOM	Eastern Africa
Mozambique	4,398.00	Residential	Eastern Africa
Rwanda	58,212.00	Full FOM	Eastern Africa
South Sudan	202,581.00	Full FOM	Eastern Africa
Uganda	197,877.00	None	Eastern Africa
United Republic of Tanzania	101,021.00	Full FOM	Eastern Africa
Zimbabwe	4,356.00	Full FOM	Eastern Africa
Cameroon	98,969.00	Implied	Central Africa
Central African Republic	14,014.00	Full FOM	Central Africa
Chad	373,675.00	Full FOM	Central Africa
Democratic Republic of Congo	65,109.00	Full FOM	Central Africa
Algeria	94,133.00	Full FOM	Northern Africa
Sudan	152,194.00	No	Northern Africa
Tunisia	1,435.00	No	Northern Africa
Botswana	2,785.00	Residential	Southern Africa
Benin	4,966.00	None	Western Africa
Cote d'Ivoire	3,980.00	Implied	Western Africa
Ghana	16,016.00	Implied	Western Africa
Guinea	10,371.00	Implied	Western Africa
Liberia	65,909.00	Implied	Western Africa
Nigeria	3,154.00	Implied	Western Africa
Togo	23,540.00	Implied	Western Africa

Key		French/Belgium		British		Independent		Portuguese
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Appendix 1: Table 9

Restrictions on FOM

	State	Clear Restrictions on FOM /do they use them	Similar Alien Restr.	Only Residential Restrictions/ do they use them	Implied FOM restrictions /Permission to work
1	Burundi	<p>Refugee Act 2008. Has positive FOM clause but can be derogated.</p> <p>Art 89: “By derogation with article 74 of this Act, the Ad Hoc Committee may prohibit or restrict the freedom of movement of prima facie refugees. Any displacement must be authorized by a written emanating from an authority designated by the Ad Hoc Committee.”</p> <p>Not currently Used. (G) (F)</p>	No	No	<p>Yes – UNHCR and US reports</p> <p>Yes but barriers</p>
2	Djibouti	No. Constitution – only FOM for (C)	No	No	<p>Potentially see reports</p> <p>Yes but barriers</p>
3	Eritrea	No refugee Law but clear restrictions on FOM	N/a		Yes
4	Ethiopia	<p>Refugee Proclamation 2004</p> <p>Article 21 (2) Notwithstanding the provisions of Sub-Article (1) (d) of this Article, the Head of Authority may designate places and areas in Ethiopia within which recognised refugees, person who have applied for recognition as refugees, and family members thereof shall live, provided that the areas designated shall be located at a reasonable distance from the border of their country of origin or of former habitual residence.</p>	No		No

5	Kenya	<p>Kenya Subsidiary Legislation 2009</p> <p>35. (1) An asylum seeker or a refugee may apply to the Commissioner, through the refugee camp officer, for permission to travel outside a designated area.</p> <p>(2) An application under subregulation (1) shall be</p> <p>(3) The Commissioner shall issue a movement pass to an asylum seeker or a refugee who has a valid reason to travel outside a designated area.</p> <p>(4) Where the commission refuses to grant a movement pass he shall give reasons in writing for refusing to grant an application made under sub regulation (1).</p>	Only in times of emergency	Refugees in camps can only leave if there's a specific and 'valid' reason	N/a Permission to work but need to pay for visa and most in camps so very hard.
6.	Malawi	<p>Refugee Act 1989</p> <p>13. Regulations</p> <p>The Minister may make regulations for carrying out or giving effect to the provisions of this Act and without prejudice to the generality of the foregoing such regulations may -</p> <p>(a) prescribe anything required to be prescribed under this Act;</p> <p>(b) make provision for -</p> <p>(i) procedure to be followed by competent officers for the purpose of facilitating the entry of refugees and their family members;</p> <p>(ii) co-operation between governmental and non-governmental organizations respecting the affairs of refugees;</p> <p>(iii) relief assistance to be accorded to recognized refugees pending the Committee's decision;</p> <p>(iv) the welfare of refugees and their family members generally;</p> <p>(v) registration of refugees;</p> <p>(vi) the travelling or movement of refugees within and outside Malawi.</p>	No – only in relation to working visas	N/a – strict FOM restrictions	<p>Permission to work is incredibly hard esp. with encampment policy.</p> <p>UNHCR trying to lobby a rights based change</p>
7	Mozambique	Ref Act but no FOM restrictions on refugees	N/a	Yes – but can request to move.	Yes – appears to be the case (see US report and ref law)

8	Rwanda	Ref Act. FOM given to recognised refugees – Art 22	Only Residential Alien Law		Yes Can work but need visa and very difficult.
9	South Sudan	Ref law – no ref to FOM	N/a	No	Yes – see UNHCR docs Allowed to work – same as aliens
10	Uganda	Ref Act 2006 30. (1) Subject to subsection (2) of this section, a recognised refugee is entitled to free movement in Uganda. (2) The free movement of a recognised refugees in Uganda is subject to reasonable restrictions specified in the laws of Uganda, or directions issued by the Commissioner, which apply to aliens generally in the same circumstances, especially on grounds of national security, public order, public health, public morals or the protection of the rights and freedoms of others;		No	Aid only in camps but allowed to work with no restrictions
11	United Republic of Tanzania	Ref Act 1998 17.Requirement to reside in a designated area (1)The competent authority in consultation with the Minister or the Director may by order, require any asylum seeker or refugee or group or category of refugees to whom this section applies who is within his area to reside within a designated area whether or not such area is within the jurisdiction of competent authority. (2)The competent authority in consultation with the Minister, or the Director may require any asylum seeker or refugee or group or category of refugees to whom this section applies who is within a designated area within such competent authority's area to move to or reside in any other designated area whether within such competent authority's area or not. (3)Any asylum seeker or refugee to whom an order made under this section applies who- (a)fails to comply with such order; or	Residential restrictions Immigration Act Vague	No – both only FOM with permit for specific reasons	No permission to work

		<p>(b) fails to move to or take up residence in a designated area in accordance with such order within reasonable time; or</p> <p>(c) having arrived at a designated area, in pursuance of such order, leaves or attempts to leave such area, except in pursuance of some other order or permit made under this section, shall be guilty of an offence against this Act.</p> <p>(4) The competent authority or the Director as the case may be, may vary, revise or cancel any order or requirement made by him under subsections (1) or (2) of this section.</p> <p>(5)(a) No asylum seeker or refugee shall be allowed to leave a designated area as directed under this section unless he has sought and obtained a permit from Director or Settlement Officer as the case may be, and, subject to such terms and conditions as the Director or a Settlement Officer may prescribe in the permit.</p> <p>(b) No asylum seeker or refugee may be allowed to be out of a designated area for more than fourteen days unless the Director has allowed in the permit a longer period upon which an asylum seeker or a refugee may stay outside the designated area.</p> <p>(6) Any asylum seeker or refugee to whom a permit or travel document has been issued under this section who fails to comply with the terms and conditions thereof shall be guilty of an offence against this Act.</p>			
12	Zimbabwe	<p>Ref Act 1983 Act 12</p> <p>2) The Minister may, by notice in the Gazette, designate places and areas in Zimbabwe within which all -</p> <p>(a) recognized refugees and protected persons; and</p> <p>(b) persons who have applied in terms of section seven for recognition as refugees; and</p> <p>(c) members of the families of persons referred to in paragraph (b);</p> <p>or any classes thereof, as may be specified in the notice, shall live.</p> <p>(3) Subject to the provisions of this Act, every recognized refugee and protected person within Zimbabwe shall, in respect of wage-earning employment, be entitled to the same rights and be subject to the same restrictions, if any, as are conferred or imposed generally on persons who are not citizens of Zimbabwe</p>	No Constitution allows for restriction of FOM only in certain situations	Both	Policy is encampment so while possible to work legally practically no

13	Cameroon	<p>Art 8</p> <p>(3) The claimant in possession of the certificate of submission is free to move. However, it is required to notify the responsible immigration his travels and changes of address and introducing herself as necessary authority.</p> <p>Art 9</p> <p>Without prejudice to the provisions of Chapters I and II set out above, all human rights and the provisions of Chapters II, III, IV and V of the Geneva Convention on Refugees of 28 July 1951 and the OAU's September 10, 1969 refugee apply to refugees regularly installed in Cameroon and within the rights granted to nationals. These include, among others:</p> <ul style="list-style-type: none"> - Non-discrimination - the right to practice their religion freely - the right to property - freedom of association - the right to sue - the right to work - the right to education - the right to housing - the right to social and public assistance - freedom of movement - the right to obtain identity documents and travel titles; - The right to transfer assets - the right to naturalization 	No restrictions	No	No – registered refugees can work.
14	Central African Republic	<p>2007 Act. No Copy – UNHCR report and US Refugee report</p> <p>FOM guaranteed for refugees and all (constitution)</p>	No	No	No. Right to work – but hard.
15	Chad	<p>No Act. Const states FOM for citizens</p> <p>Clear restrictions in camps – government policy. Unclear who gets sent to camps/who allowed Urban settlement</p>		Gov Policy. Residential and need pass to move around. Time limits involved	Yes technically allowed to work if in urban areas.
16	Democratic Republic of Congo	<p>2002 Refugee Law – No FOM restrictions. Same as Nationals – see US report.</p>	No	No	No. Can technically work – see info sheet US.
17	Algeria	<p>1963 decree. No ref to FOM.</p>	N/a	Complete restriction	Can't work
18	Sudan	<p>Ref Act 1974</p>	No	Complete	Can't work

		<p>Art 10</p> <p>10. Detention of the refugee and his subjection to the laws and prevention of political activity.</p> <p>(1)The refugee shall be subject to the general laws which apply to all Sudanese. He may be detained if it is found necessary.</p> <p>(2)No refugee shall exercise any political activity during his presence in the Sudan, and he shall not depart from any place of residence specified for him. The penalty for contravening this subsection, shall be imprisonment for not more than one year.</p>		restriction	No right – UNHCR lobbying for FOM and right to work
19	Tunisia	No refugee Law – working on it with UNHCR	N/a	No	Hard to get work or rent as no legal documentation given to refugees. So Yes. But UNHCR working on it.
20	Botswana	Refugee Act but no FOM clause. Policy of encampment.	Immigration Act. FOM restriction on grounds of public interest	N/a	Few allowed to leave camp and work but very hard.
21	Benin	No refugee Law. Constitution allows for FOM for all	N/a	Potentially	No and allowed to work
22	Cote d'Ivoire	No refugee law	N/a	No	Permission to work
23	Ghana	<p>Refugee Act 1993</p> <p>13. Designated areas for refugees</p> <p>The Secretary may, by notice in the Gazette or by any other</p>	N/a	No	<p>Yes – health/work etc.</p> <p>Permission to work but extremely hard. Restrict areas for security</p>

		<p>means of communication, as he deems appropriate designate places and areas in Ghana where -</p> <p>(a) persons with refugee status;</p> <p>(b) persons who have applied under this Law for refugee status; and</p> <p>(c) members of the families of persons referred to in paragraphs (a) and (b) of this section, or any class thereof shall be alive.</p>			
24	Guinea	No refugee act.	N/a	No	Potentially – health/aid only in camps. Yes allowed to work but reality hard
25	Liberia	<p>Refugee Act 1993</p> <p>Section 12</p> <p>(2)The Executive Director may, by notice in the gazette, designate places and areas in Liberia within which all</p> <p>(a)recognized refugees and protected persons; and</p> <p>(b)persons who have applied in terms of section seven for recognition as refugees; and</p> <p>(c)members of the families of persons referred to in paragraph (b);</p> <p>or any classes thereof, as may be specified in the notice; shall live. This subsection shall however, not preclude the right of any refugee to live in any place of his choice within the Republic of Liberia.</p>	No. Constitution states that everyone has FOM unless for security/emergency	Government can designate areas but refs can still live wherever.	Yes implied – aid etc in camps. Health etc. However allowed to work.

		<p>(3)Subject to the provisions of this Act, every recognized refugee and protected person within Liberia shall, in respect of wage-earning employment, be entitled to the same rights and be subject to the same restrictions, if any, are conferred or imposed generally on persons who are not citizens of Liberia:</p> <p>Provided that no recognized refugee or protected person shall be subject to any such restriction imposed for the protection of the national labour market.</p>			
26	Nigeria	Ref Act but no FOM restrictions.	N/a	No	Implied potentially with Aid etc only I Camps. However integration policy in effect –see UPR. Can work
27	Togo	Ref Act but no FOM restrictions	N/a	No	Implied potentially with aid etc only in camps. Can work.